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**Paper summarizing and clarifying claimed subject matter related to a
Brief on Appeal – Provided per instructions in Notification of Non-
Compliant Brief**

IN THE UNITED STATES PATENT OFFICE

In re application of David Huddleston
Pub.No. US 2005/0161352 A1
Serial No. 10/765,501
Filed 1/26/2004
“Flared Opening Drawstring closure Cell
Phone Carrier”

Before the Board of Appeals
On Appeal

This document and enclosures will be sent by Express Mail on Monday 2/25/2006

Hon. Commissioner of Patents,
Washington, D.C.

Sir,

This is a paper summarizing and clarifying the claimed subject matter for the currently active claims in application Serial No. 10/765,501 Filed 1/26/2004, by David E. Huddleston. This paper is being provided per the instructions given in the Notification of Non-Compliant Brief mailed on 2/7/08.

Respectfully,
David E. Huddleston
President, IMHUDCO, LLC

David E. Huddleston 2/24/08

(i) Real party in interest

The real party in interest is IMHUDCO, LLC. Patent application 10/765,501 was assigned to IMHUDCO, LLC. David E. Huddleston is the president of IMHUDCO, LLC, and he is herein writing on behalf of IMHUDCO, LLC.

(ii) Summary of claimed subject matter

Applicant's invention is a cell phone carrier designed to be appropriate and fashionable in multiple social settings and situations, which will be comfortable and convenient to use and carry, and which will be low cost to produce. This cell phone carrier design also facilitates easy imprinting of indicia, which coupled with the low cost of production will readily enable usage as an advertising vehicle in large scale promotions.

There are two basic embodiments of the invention claimed, along with variations of each embodiment. The first embodiment is illustrated in FIG. 1 (Sheet 1 of 8 drawing pages) of the application, which shows a cell phone carrier designed for convenience of removal and insertion of the cell phone, for convenience of carrying, and due to the ease and economy of manufacture is well-suited as an advertising medium. The key features of this embodiment are contained in Claim 1, and are comprised of a functionally appropriate shape, and attached handles for quick opening of the cell phone carrier. A detailed description of the typical embodiment of the invention is given in paragraph [0048] on page 4 of the specification.

Figures 2A through 2I (Sheets 3 and 4 of 8 drawing pages) illustrate a typical manufacturing process of the first basic embodiment of the invention, whereby the result is a cell phone carrier which is symmetrical about its vertical axis. The detailed description of the manufacturing process of the symmetric first basic embodiment is given in paragraphs [0049] through [0058] on page 4 of the specification. Figures 3A through 3I (Sheets 4 and 5 of 8 drawing pages) illustrate a typical manufacturing process of the first basic embodiment of the invention, whereby the result is a cell phone carrier which is not symmetrical about its vertical axis. The detailed description of the manufacturing process of the non-symmetric first basic embodiment is given in paragraphs [0059] through [0069] on pages 4 and 5 of the specification.

The second basic embodiment closely resembles the first, with the exception that the flared opening of the cell phone holder is achieved by using a stretchable material for the cell phone holder, thus achieving the functionally necessary flared opening to the cell phone carrier by stretching the opening of the carrier. A typical manufacturing process of this embodiment is illustrated in figures 4A through 4K (Sheets 6, 7 and 8 of 8 drawing pages). The detailed description of the manufacturing process of the second basic embodiment is given in paragraphs [0070] through [0081] on page 5 of the specification.

An embodiment of the invention which includes an identification badge holder (65) on the outside of the cell phone carrier is illustrated in FIG. 5K (Sheet 8 of 8 drawing pages). The detailed description of the embodiment including a badge holder is given in paragraph [0082] on page 5 of the specification.

The embodiments utilizing indicia (63), and clipping means (53) are illustrated in FIG. 1 (Sheet 1 of 8 drawing pages).

(iii) Claims

1. (CURRENTLY AMENDED) A cell phone carrier comprising:
 - a. A suitably sized bag, which is of flexible material, and which is assembled from one or more panels of material into a single unit, said bag being illustrated as item 5 in Figures 1 (Sheet 1 of 8 drawing pages), item 5 in Figures 2H and 2I (Sheet 3 of 8 drawing pages) and item 13 in Figures 3H and 3I (Sheet 5 of 8 drawing pages), and which has a flared opening when the bag is fully opened, said flared opening being illustrated in Figures 2H (Sheet 3 of 8 drawing pages) and 3H (Sheet 5 of 8 drawing pages).
 - b. A means to serve as a drawstring for closing the bag of 1.a., said drawstring being illustrated by item number 51 in Figure 1 (Sheet 1 of 8 drawing pages), item 51 in Figures 2D through 2I (Sheets 2 and 3 of 8 drawing pages) and item 51 in Figures 3D through 3I (Sheets 4 and 5 of 8 drawing pages).
 - a. A means to mate a drawstring with the edge of the opening of the bag of 1.a., either continuously or at discrete points along the circumference of the opening of the bag, said mating means being illustrated by items 209, and 211 in Figure 2D (Sheet 2 of 8 drawing pages) and item 303 in Figure 2E (Sheet 3 of 8 drawing pages), and by item 219 in Figure 3D (Sheet 4 of 8 drawing pages) and item 311 in Figure 3E (Sheet 5 of 8 drawing pages),
 - b. One or more handles attached at or near the edge of the opening of the bag 1.a., and which are positioned to facilitate quick opening of the bag of 1.a., said handle being illustrated as item numbered 62 in Figure 1 (Sheet 1 of 8 drawing pages) and as item 62 in Figure 5 (Sheet 8 of 8 drawing pages).
2. (CANCELED)
3. (ORIGINAL) A carrier as in claim 1 which has been embellished with indicia, said indicia being illustrated by item 63 in Figure 1 (Sheet 1 of 8 drawing pages).
4. (CURRENTLY AMENDED) A carrier as in claim 1 which is adapted to carry eyeglasses or sunglasses, or small electronic items including calculators, palmtop or handheld computers, personal organizers and contact managers, said adapted carrier being illustrated by item 61 in Figure 1 (Sheet 1 of 8 drawing pages).

5. (CURRENTLY AMENDED) A carrier as in claim 1 which has an attaching means affixed to the end of the drawstring means, which enables the user to attach the carrier to their clothing, or to a belt or belt loop, said attaching means being illustrated by item 53 in Figure 1 (Sheet 1 of 8 drawing pages).
6. (CANCELED)
7. (CURRENTLY AMENDED) A carrier as in claim 1 which also incorporates an external identification card holder, and which permits the identification card to be kept visible, said card holder being illustrated by item 65 in Figure 5 (Sheet 8 of 8 drawing pages).
8. (CANCELED)
9. (CANCELED)
10. (CANCELED)
11. (CURRENTLY AMENDED) A cell phone carrier comprising:
 - a. A suitably sized bag of flexible and stretchable material, which is assembled from one or more panels of material into a single unit, said bag being illustrated as item 23 in Figures 4H, 4I, 4J and 4K (Sheets 7 and 8 of 8 drawing pages).
 - b. A means to mate a stiff wire-like means with the edge of the opening of the bag, either continuously or at discrete points along the circumference of the opening, said means illustrated by item 229 in Figure 4D (Sheet 6 of 8 drawing pages) and item 321 in Figure 4E (Sheet 7 of 8 drawing pages).
 - c. A stiff wire-like means to be mated with the edge of the opening of the bag and which will shape the mouth of the bag while it is open, said means being illustrated by item 55 in Figures 4D through 4K (Sheets 6, 7 and 8 of 8 drawing pages).
 - d. A clasping means assembled onto the stiff wire-like means, and also attached to the carrier bag at the edge of the opening of the bag, such that the bag can be opened by pulling the clasping means along the stiff wire-like means and then engaging the clasping means to maintain a flared

shape to the opening , said means being illustrated by item 57 in Figures 4H through 4K (Sheets 7 and 8 of 8 drawing pages).

12. (CANCELED)
13. (CURRENTLY AMENDED) A carrier as in claim 11 which has been embellished with indicia, said indicia being illustrated by item 63 in Figure 1 (Sheet 1 of 8 drawing pages).
14. (CURRENTLY AMENDED) A carrier as in claim 11 which is adapted to carry eyeglasses or sunglasses, or small electronic items including calculators, palmtop or handheld computers, personal organizers and contact managers, said adapted carrier being illustrated by item 61 in Figure 1 (Sheet 1 of 8 drawing pages).
15. (CURRENTLY AMENDED) A carrier as in claim 11 which has an attaching means affixed to the end of the stiff wire-like means, which enables the user to attach the carrier to their clothing, or to a belt or belt loop, said attaching means being illustrated by item 53 in Figure 1 (Sheet 1 of 8 drawing pages).
16. (CURRENTLY AMENDED) A carrier as in claim 11 which also incorporates one or more handles attached at or near the edge of the opening of the bag, and which are positioned to facilitate quick opening of the bag, said handle being illustrated as item numbered 62 in Figure 1 (Sheet 1 of 8 drawing pages) and as item 62 in Figure 5 (Sheet 8 of 8 drawing pages).
17. (CURRENTLY AMENDED) A carrier as in claim 11 which also incorporates an external identification card holder, and which permits the identification card to be kept visible, said card holder being illustrated by item 65 in Figure 5 (Sheet 8 of 8 drawing pages).
18. (CANCELED)
19. (CANCELED).
20. (CANCELED).



Appendix to Patent Appeal Brief re patent application 10/765,501

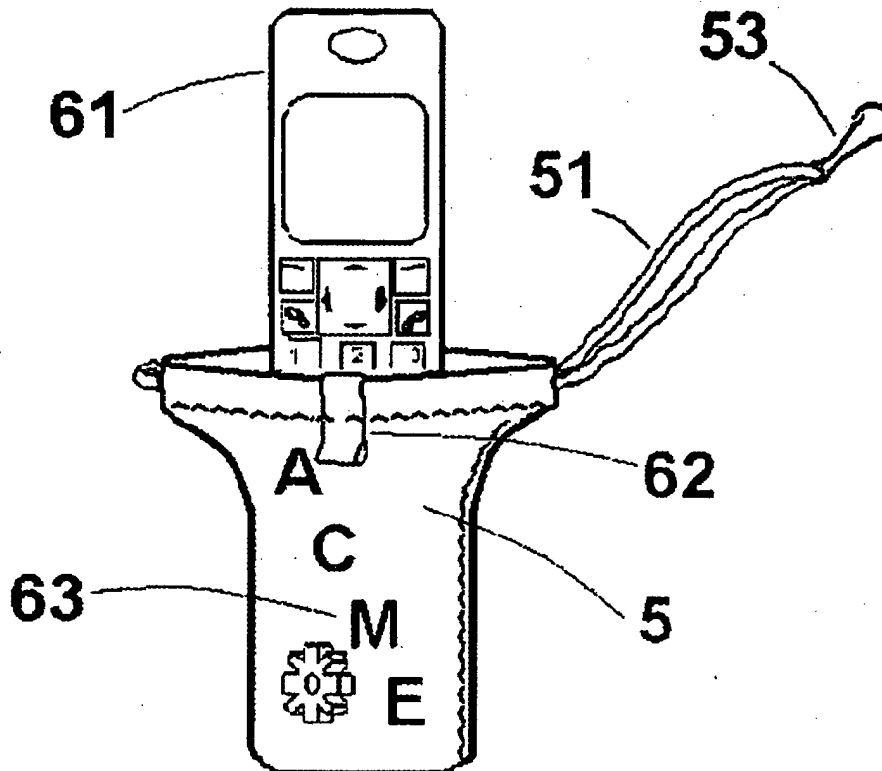
1. Copy of patent application 10/765,501 by David E. Huddleston filed on 1/26/2004 for "FLARED-OPENING DRAWSTRING CLOSURE CELL PHONE CARRIER"
2. A copy of the Notification of Non-Compliant Appeal sent on 1/23/08.
3. A copy of the ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER sent on 2/7/08.
4. A copy of the Notification of Non-Compliant Appeal sent on 7/19/06.
5. Copy of Final Action in regard to 10/765,501 executed by examiner Luan K. Bui on 1/11/2006
6. Copies of Internet Printed Publications listed in applicant's disclosure of Non Patent Literature Documents
7. Copy of MPEP § 2128 regarding Patent Office rules on what constitutes a "Printed Publication" suitable for disclosure
8. Copy of MPEP § 2173.01 and MPEP § 2173.02 regarding claim terminology and precision
9. Copy of MPEP § 706.7 regarding final rejection of claims.
10. Copies of applicable prior art citations by the examiner:
 - a. Copy of 213,580 by Minnie Lindheim filed 3/25/1879
 - b. Copy of 665,942 by J.N. Tabler filed 1/15/1901
 - c. Copy of US 2005/0072698 by Leo Kahl filed 9/2/2003
 - d. Copy of 4,974,709 by Thelma L. Furlow and Lisa M. Furlow filed 12/4/1990
 - e. Copy of 3,225,806 by Victor S. Pollak, et.al filed 12/28/1965
 - f. Copy of 4,215,629 by Alexander P. Janssen filed 8/5/1980
11. United States Court of Appeals for the Federal Circuit in regard to 04-1152 Teleflex, Incorporated and Technology Holding Company v. KRS International, Co. 1/6/2006. This court decision is referred to as USCAFC-0401152 when referenced in the brief.



US 20050161352A1

(19) **United States**(12) **Patent Application Publication** (10) **Pub. No.: US 2005/0161352 A1**
Huddleston (43) **Pub. Date: Jul. 28, 2005**(54) **FLARED-OPENING DRAWSTRING
CLOSURE CELL PHONE CARRIER****Publication Classification**(51) **Int. Cl.⁷** B65D 85/00(52) **U.S. Cl.** 206/320(76) **Inventor:** David Eugene Huddleston, Lakewood,
OH (US)**Correspondence Address:**
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1352 BONNIEVIEW AVE.
LAKEWOOD, OH 44107 (US)(57) **ABSTRACT**

A cell phone carrier designed to be appropriate and fashionable in multiple social settings and situations, which will be comfortable and convenient to use and carry, and which will be low cost to produce. This cell phone carrier design also facilitates easy imprinting of indicia, which coupled with the low cost of production will readily enable usage as an advertising vehicle in large scale promotions.

(21) **Appl. No.:** 10/765,501(22) **Filed:** Jan. 26, 2004

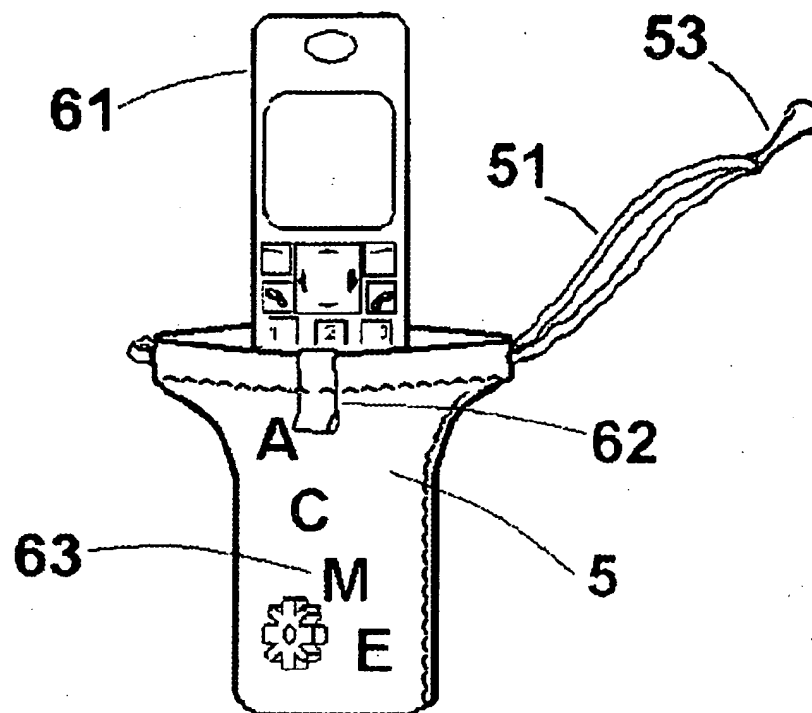


FIG. 1

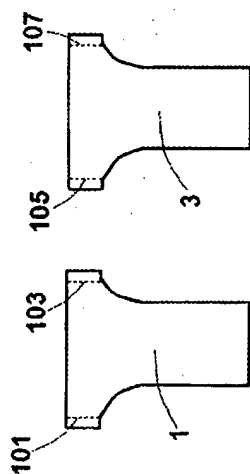


FIG. 2A

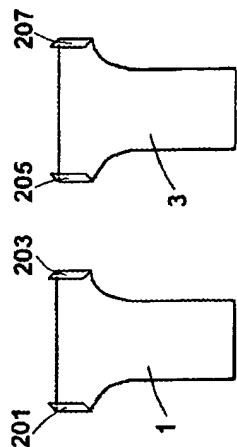


FIG. 2B

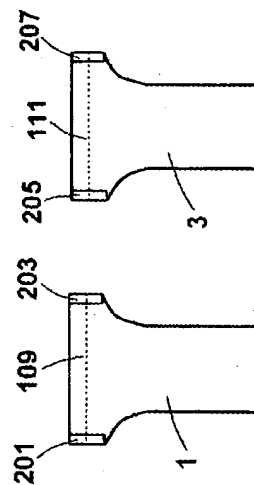


FIG. 2C

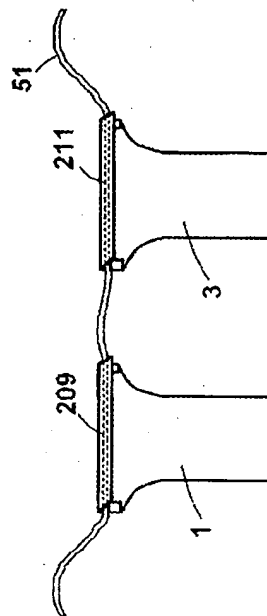


FIG. 2D

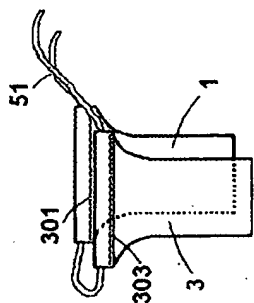


FIG. 2F

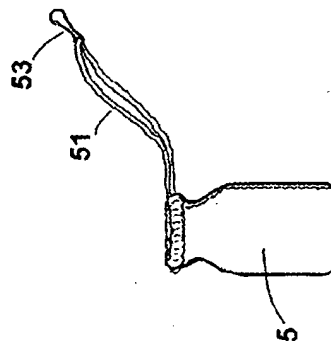


FIG. 2I

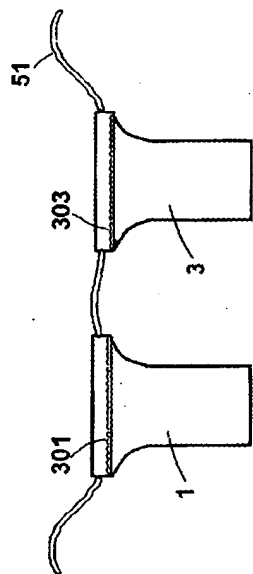


FIG. 2E

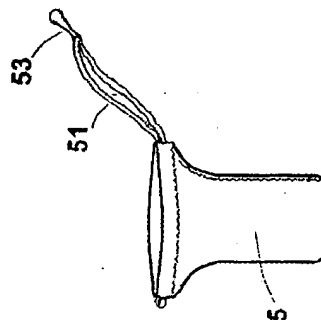


FIG. 2H

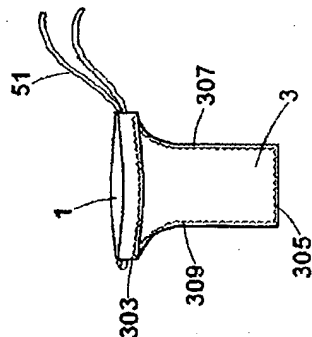


FIG. 2G

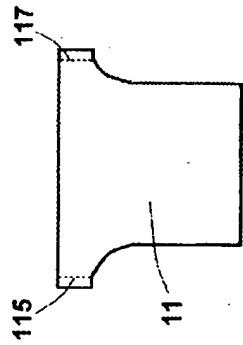


FIG. 3A

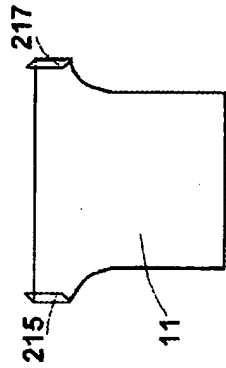


FIG. 3B

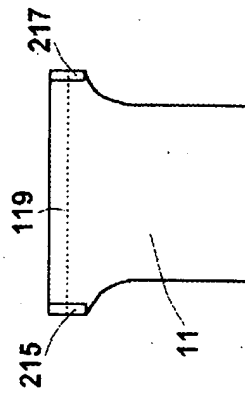


FIG. 3C

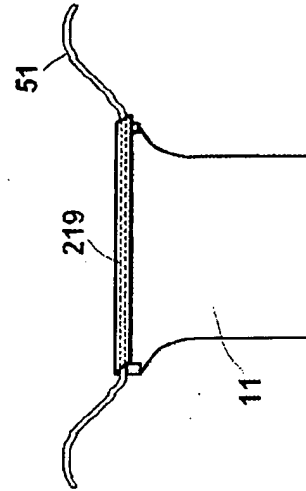


FIG. 3D

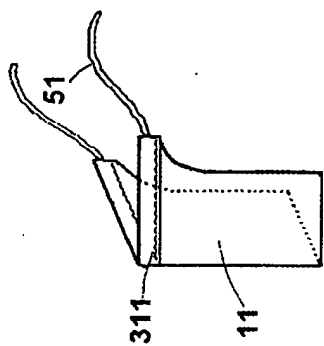


FIG. 3F

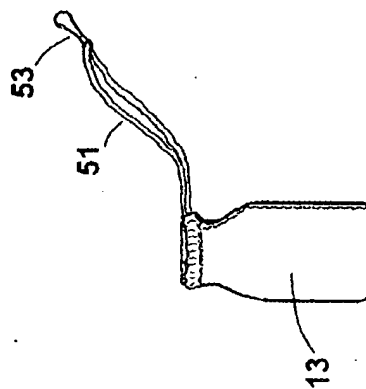


FIG. 3I

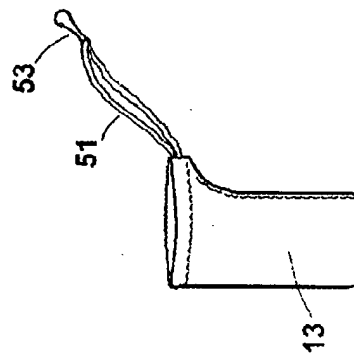


FIG. 3H

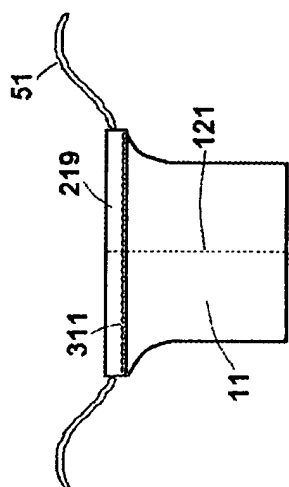


FIG. 3E

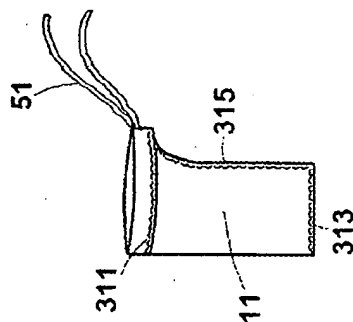


FIG. 3G

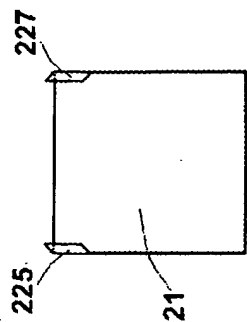


FIG. 4B

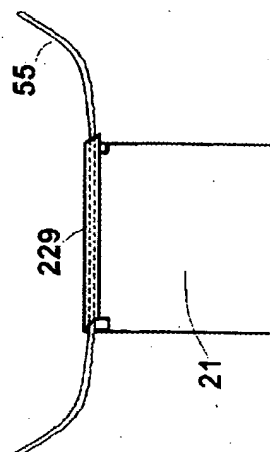


FIG. 4D

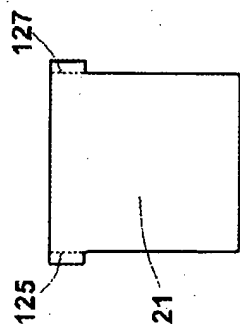


FIG. 4A

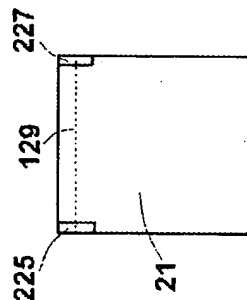


FIG. 4C

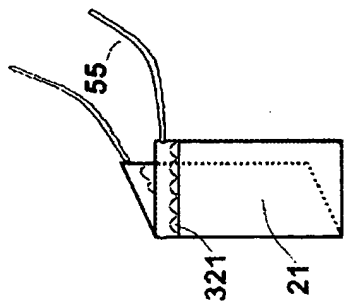


FIG. 4F

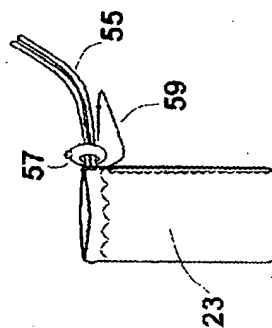


FIG. 4I

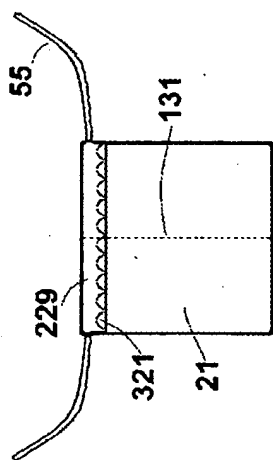


FIG. 4E

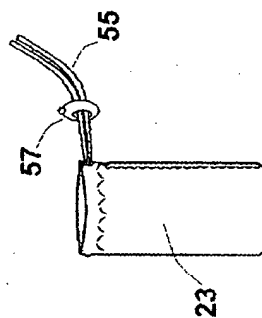


FIG. 4H

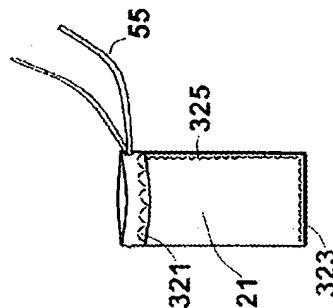


FIG. 4G

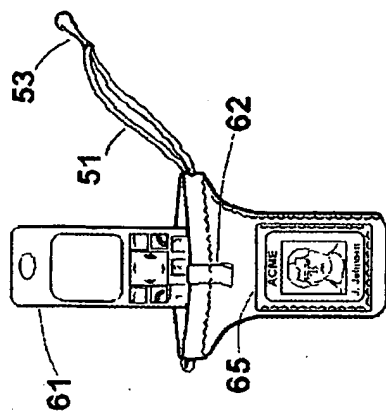


FIG. 5

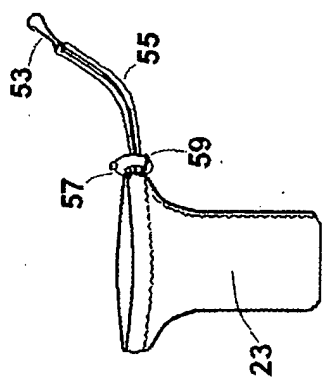


FIG. 4J

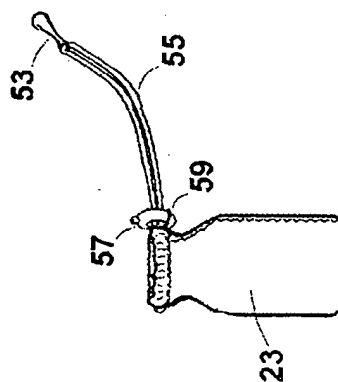


FIG. 4K

FLARED-OPENING DRAWSTRING CLOSURE CELL PHONE CARRIER

CROSS-REFERENCE TO RELATED APPLICATIONS

[0001] Not Applicable

FEDERALLY SPONSORED RESEARCH

[0002] Not Applicable

SEQUENCE LISTING OR PROGRAM

[0003] Not Applicable

BACKGROUND OF THE INVENTION—FIELD OF INVENTION

[0004] This invention is in the area of carriers for small personal items, especially for carrying items such as cell phones.

BACKGROUND OF THE INVENTION

[0005] Cell phones are relatively delicate electronic devices. However, little thought seems to be given by their designers to the transport and protection of cell phones. Whether for safety or convenience people want to keep their cell phone always handy. They are becoming small enough to carry within one's pocket, but their displays and plastic panels are easily scratched by keys, etc. when carried in a handbag or pocket. An exception might be the clam shell type cell phones, which shut to hide the display and keypad. These are usually the most expensive variety of phone however, and are thus the least common type in use, and even for this type of cell phone the exterior of the cell phone can be easily scratched or marred.

[0006] Many varieties of cell phone carriers and cases have been patented or marketed, which provide some measure of protection and which usually facilitate carrying the cell phone. Additional features could also be desirable for a cell phone carrier. The following is a list of requirements one might evaluate a cell phone carrier against:

- [0007] 1. Provides scratch and abrasion protection, and possibly bump protection.
- [0008] 2. Has low cost of purchase relative to the cost of the phone.
- [0009] 3. Adds little bulk and provides for convenient and comfortable carrying in a variety of ways, such as in a trouser pocket or attached to one's person.
- [0010] 4. Engenders little or no compromise of cell phone functions.
- [0011] 5. Provides wide coverage of cell phone models, where applicable.
- [0012] 6. Provides for easy removal and insertion of the cell phone, where applicable.
- [0013] 7. Fashionable or at least not unattractive appearance, which is appropriate to multiple social situations.
- [0014] 8. Designed for easy and low-cost application of advertising indicia

[0015] Most people would agree with at least a few of these criteria. Some of the criteria don't apply to certain classes of cell phone carrier. For instance criteria 5 and 6 wouldn't apply to many custom cell phone carriers, which are designed to enclose the cell phone even during use. Criterion 7 is only lately being recognized by the public as being of any importance. Criterion 8 probably isn't currently recognized at all by the public. However, criterion 8 is indirectly of benefit to a cell phone user in that he or she might receive a practical, attractive, and free cell phone carrier from a motivated advertiser. All cell phone carriers currently patented and/or marketed fall short on one or more of the above criteria.

[0016] Cell phone carriers might be classified into three categories. First would be those which are designed to permanently enclose the cell phone during transport and use. The second, and probably the largest class of cell phone carriers, would be those where the cell phone is removed for use. A third class could be adaptations of prior art which weren't specifically designed or targeted as cell phone carriers.

[0017] The class of cell phone carrier designed to permanently enclose the cell phone is generally designed for a specific model of cell phone. Because of this no examples were found of patents in this category. This type of cell phone carrier will hereafter be termed a custom cell phone carrier.

[0018] For the subcategory of custom cell phone carriers which are designed to permanently enclose the phone, ease of removal doesn't fully apply. However, when it does become necessary to remove the carrier, one might find the plastic window fused to the cell phone display. Also these permanently enclosing carriers all compromise the cell phone function to some degree. Plastic windows smudge and become hazy. Orifices and windows become misaligned, and this problem will be compounded when a cell phone with an integrated camera is involved.

[0019] Of the remaining criteria that apply, custom cell phone carriers generally provide scratch protection. They also facilitate carrying through a clipping means, although the position of carrying when clipped to one's person is not comfortable or stylish. If worn on the hip the carrier is easily bumped, such as on door jams. If worn at one's front, it will press into one's stomach when sitting. If worn at one's back, the carrier is highly likely to be sat upon. Wherever it is worn it will make a lump under a business suit, or clash with fashionable or formal attire. Where it applies, cell phone removal and insertion is generally adequate. However, cell phone carriers in this class do not satisfy the remaining criteria. Their cost is high relative to the cost of cell phones, and this is especially obvious when a cell phone is provided free along with a cell phone service contract. The fact that this type of cell phone carrier works only for a single model of cell phone can still be viewed as a negative even though it is by design. This becomes apparent when a change of cell phone service provider requires obtaining a new cell phone of a different model. Custom cell phone carriers also add an unacceptable amount of bulk, which will be noticeable when carrying within a trouser pocket for instance. This is true even when an integrated clipping means is removable.

[0020] Custom cell phone carriers are almost uniformly made from leather or leather-like material, with multiple

panels sewn together. The carrier itself is not attractive or fashionable, especially in a business or formal setting. Also this type of construction is not inexpensive, or otherwise suitable for imprinting of indicia, and hence for use as an advertising vehicle.

[0021] The second broad category of cell phone carriers are those which do not permanently enclose the cell phone. These carriers are usually of a clip, holster or pouch type of construction. Numerous patents were found of cell phone carriers fitting into this category. Some relatively distinctive items were also found being marketed, for which a corresponding patent wasn't located.

[0022] Some examples of relatively primitive cell phone carriers were found, which probably only satisfy a few of the requirements listed above. Examples are U.S. Pat. Nos. 5,535,928, 6,006,969, and 6,076,789. These all provided no real scratch protection. They do facilitate carrying on one's person. However the position of carrying, like almost all conventional cell phone carriers, would be cumbersome and unattractive. Further these cell phone carriers are hardly attractive or suitable for business or formal settings. U.S. Pat. No. 6,006,969 illustrates a problem observed with many "generic" cell phone carrier designs. This is that the physical fit for any given cell phone will likely be a compromise. For most phones the fit will be either too loose or too tight. This design is further not likely to be cheaply manufacturable. Also these carriers would add too much bulk to allow comfortable carrying in a trouser pocket. Lastly, these cell phone carriers are clearly not suitable for imprinting of indicia, logos, or advertising promotions.

[0023] Numerous instances of holster-like cell phone carriers were found, and while these cell phone carriers vary in construction and shape, they can be considered as a group according to the requirements listed above. They are as follows: U.S. Pat. Nos. 5,351,868, 5,511,704, 5,833,100, 5,850,954, 5,897,040, 5,947,359, 5,957,357, U.S. Pat. No. 6,182,878B1, U.S. Pat. No. 6,315,182B1, U.S. Pat. No. 6,330,430B1, U.S. Pat. No. 6,367,672B1, U.S. Pat. No. 6,454,146B2, U.S. Pat. No. 6,478,205B1, U.S. Pat. No. 6,533,150B1, U.S. Pat. No. 6,651,854B1. These cell phone carriers are subject to many of the same criticisms as the class of custom cell phone carriers. They are not likely to be low cost. Being constructed of stiff material, they will provide a compromised physical fit for any given cell phone. They are not suitable for very high volume production, or for imprinting of indicia and advertising. They add too much bulk for comfortable carrying in a trouser pocket. They are not fashionable or appropriate for business or formal settings, and the location of the carrier on one's person is likely to be uncomfortable, unattractive, and cumbersome.

[0024] A few patents were found which closely resembled the holster-like group above. However, these designs differed in the way the way they were carried on the person. U.S. Pat. No. 5,653,336 provides for carrying on one's torso, and patent U.S. Pat. No. 6,568,576B1 provides for carrying around a shoulder strap. The criticisms on comfort and convenience in all body positions, and on inappropriateness for business and formal settings still apply to these designs. All other criticisms from the previous paragraph apply to these designs as well.

[0025] A class of patents was found for cell phone carriers, which attempt to address the requirement for being fashion-

able and business-appropriate, some of which were design patents. These are: Des.368,800, Des.377,117, Des.382,996, Des.416,132, U.S. Pat. No. 6,123,240, and U.S. Pat. No. 6,227,361 B1. A product called "PDA Cell Phone Semi-hard case", marketed by Cellphone-Accessories.com could also fit into this category. These designs would still not be appropriate to all social settings and to all genders, and the above criticism of comfort and convenience in all body positions still applies. The problems of being relatively costly, and being too bulky to comfortably carry in a trouser pocket applies as well. Lastly, while some of these designs illustrate artwork or decorations, the manufacturing materials involved aren't suited to high volume and low-cost imprinting with indicia. A further criticism of the "PDA Cell Phone Semi-hard Case" is of the magnetic closure. Placing a magnet very near a cell-phone can interfere with the electrical functions of the phone, even after the cell phone has been distanced from the magnet.

[0026] Many custom and non-custom cell phone carriers were found being marketed on the Internet. Most were variations on the designs discussed above. A few were distinctive enough to merit some discussion here.

[0027] Some cell phone pouches were found, which are targeted at the female market, and which try to address the need to be fashionable and attractive in certain social settings. One of these is the "Poire Pouch", found in the Northwest Life section of the Dec. 12, 2003 Seattle Times. This product is reported as being imported from Japan. This design while appropriate to some social settings, would not be for all, and would likely not be appropriate for use by men. While the product is decorated, it does not feature and would not be suited for low-cost and easy imprinting of advertising indicia. The design likely provides a compromised physical fit for many cell phone models. The design also appears to add enough bulk to make it uncomfortable to carry in a trouser pocket. A similar product, called "The Cell Phone Pouch by Priscilla Hewitt" was found at members.aol.com/crochetalong/cellpouch.htm. The same criticisms apply to this product, as to the "Poire Pouch".

[0028] The "R-Bag Hi-Tek Phone Pouch" is a carrier made of nylon rather than of leather. It was found at www.asisupplier.com. It is advertised as affording advertising indicia but mainly for premium employee gifts, and not for very high volume and very low cost assembly and imprinting of indicia such as would be required for use in advertising campaigns. While the possible variation in materials could make this design more business appropriate, it would still not likely be appropriate to formal settings. This design would also fail the tests of adding bulk, on comfort and convenience of carrying, and non-compromised physical fit for all cell phone models.

[0029] The "Travel Phone Pouch" by GO Products, found at www.menda.co.au bears some similarity to the design in the previous paragraph. However, it does not feature advertising indicia and would fail on the other criteria that design fails on.

[0030] The TimBuk2 Designs "Cell Phone Pouch" found at www.bikeworld.com, is a pouch-type carrier. While the material of construction and available colors address the issue of being business-appropriate. This design is likely not suitable for formal settings. As a one-size-fits-all product, it would likely be a compromise fit for many cell phone

models. The material of construction while not stiff, does not seem to be fully pliant. This along with the wide strap could add appreciable bulk and entail discomfort when carrying in a trouser pocket. This design further does not lend itself to imprinting of advertising indicia.

[0031] The "Possum Pam" Mobile Phone Pouch by Cybersales (NZ) Limited, found at www.nzgifts-souvenirs.co.nz/mobile-phone-pouch.htm, is a draw-string pouch knit of possum wool. The wool knit material of this design would not be appropriate in formal social settings. Also this material would not lend itself to imprinting with advertising indicia. Further, being a conventional draw-string bag, it could prove difficult to extract the cell phone from the bag, especially when in a hurry to answer a possibly important call.

[0032] "The Trapaziod Phone Pouch" found at www.kreiser.net, is a cell phone carrier targeted towards the outdoors person. It is made of thick waterproof material, intended to protect a cell phone from bumps and weather. Due to the waterproofing, this material is not likely suited for easy and low-cost imprinting of advertising indicia. Also the thickness and bulk of this carrier would not allow it to be comfortably carried in a trouser pocket. It would likely provide a compromised physical fit for many cell phone models. It would not be suited to business and formal social settings, and like the holster-like cell phone carriers discussed above, it would be unattractive and uncomfortable when carried in certain body positions.

[0033] Having surveyed the field of conventional cell phone carriers, and found each design or product deficient in one or more of the criteria listed at the beginning of this section, other areas of prior art not specifically concerned with cell phone carriers were investigated. No prior art was found which would be readily adaptable as a cell phone carrier, through obvious and non-novel variations in design and/or intended purpose. Detailed discussions of the most closely related designs follow.

[0034] A likely place to look for applicable prior art was thought to be in the area of handbags. U.S. Pat. No. 6,564,838B1 is typical of the handbag designs found. This is a design for a drawstring handbag. To adapt this design to become a cell phone carrier capable of meeting the design requirements listed at the beginning of this section, several changes in design and purpose would have to be made. First it would have to be reduced in size to fit the proportions of a cell phone. The design of the bottom portion of the handbag would need to be changed from a rigid calabash-shaped section, and to be made from a highly flexible material. Other sections of the handbag would need to be made from highly flexible material, rather than from the heavy "durable" materials intended for U.S. Pat. No. 6,564,838B1. Similarly the method and material of construction would need to be modified to better promote very high volume, preferably automated, and very low cost assembly. Easy and very low cost imprinting of advertising indicia would need to be addressed as well. Further, multiple changes in the stated purpose of this design would need to be made. It would no longer be intended to carry multiple, and collectively relatively heavy, "personal effects", but rather a single small and light item. Much greater emphasis and attention to design details of the opening of the bag would be required to adapt it to the purpose of quickly removing a small item

of nearly the same size as the bag itself. Also note the main stated purpose of this design is as a handbag, which commonly is used by the female population, and which is commonly carried by the hand or on the arm. Adaptation as a multi-purpose cell phone carrier would thus further require variation of the intended purpose of the design to serve the majority of both the male and female population, and would further need to provide for occasional carrying within a trouser pocket or attached to someone's person by a suitable attaching means.

[0035] Various patents which were referred to by U.S. Pat. No. 6,564,838B1 were investigated as well. These are: 19,591, 115,541, 139,335, 595,685, 665,942, 2,253,688, 2,377,311. Like the referring patent, these earlier designs are focused on obtaining an enclosing bag of substantial strength and weight, for the specific purposes such as use as a mailbag or handbag. Also like U.S. Pat. No. 6,564,838B1 multiple non-obvious and novel changes would be required to adapt these designs for the purposes of a multi-purpose cell phone carrier.

[0036] Some other patents, not specifically in the area of handbags or mailbags, were found and merit some discussion. U.S. Pat. No. 4,974,761 concerns a drawstring bag for carrying coins when in a gambling establishment. U.S. Pat. No. 5,996,999 is a collector for game board pieces. U.S. Pat. No. 4,608,283 is a reusable gift bag with a drawstring bow for closure. These items bear some resemblance to the handbag/mailbag family discussed above, and similar considerations apply to the likelihood of adapting them for the purposes of a multi-purpose cell phone carrier. These designs are intended for highly specific applications, and several variations of intended purpose, and of design and construction, would be required for adaptation as a cell phone carrier.

BACKGROUND OF THE INVENTION—OBJECTS AND ADVANTAGES

[0037] The cell phone carrier herein discussed is a subtle but powerful improvement on a drawstring bag, and adapted for use as a cell phone carrier. FIG. 1 depicts a typical embodiment of the invention. This new design overcomes the drawbacks of prior art discussed earlier. In essence this design through one or more of its embodiments will meet all the requirements listed above for the ideal cell phone carrier.

[0038] It will provide scratch and abrasion protection. One of its embodiments utilizes padded or quilted fabric, and thus would provide bump or impact protection as well. Another embodiment involves using water-repellant material, or applying water-repellant properties after assembly.

[0039] This invention will greatly facilitate carrying of cell phones, in a variety of ways. An embodiment with an integrated clipping means will allow attaching the cell phone carrier to a belt, belt loop, or strap. Since the attaching means isn't rigid or inflexible, the cell phone carrier will move with a person, and allow for comfortable carrying in any body position. Since the cell phone carrier will essentially conform to the shape of the cell phone, it will add almost no bulk, and will allow comfortable carrying within a trouser pocket. Again because of the low bulk of the carrier, it will allow for comfortable carrying beneath a business suit. Further, because the cell phone carrier is made from pliable material that will conform to the shape of a cell phone, it can

be sized to accept a wide range of cell phone sizes with a minimum of compromise in fit.

[0040] Because this design entails removing the cell phone for use, it will in no way compromise the functional design of the cell phone. There will be no need to squint through filmy plastic windows or mis-aligned apertures to see the phone display or phone keys. Further, the flared mouth will enable quick and easy removal of the cell phone from the carrier. Ease of removal will be further accentuated with the embodiment of the invention which integrates handles at the mouth of the cell phone carrier. After use, the cell phone will be easily replaced within the cell phone carrier as well.

[0041] Through one of its embodiments, this cell phone carrier will also address the requirement for a fashionable and attractive appearance. Through choice of colors and/or indicia, a version of the invention can be produced which will be appropriate for any social setting including business, formal, informal, and social situations. The various shapes of the carrier are distinctive and pleasing to the eye.

[0042] This invention will entail very low cost to manufacture, which will result in low cost to consumers. Materials and automated processes are now readily available to enable easy and low-cost imprinting of indicia, and to enable a highly automated assembly process. Wholesale cost will readily enable utilization of this cell phone carrier in very large scale advertising promotions.

DRAWINGS—FIGURES

[0043] FIG. 1 shows a typical embodiment of the cell phone carrier, including advertising indicia and handles for easier opening.

[0044] FIGS. 2A to 2I show the details of assembly for the preferred embodiment of the cell phone carrier.

[0045] FIGS. 3A to 3I show the details of assembly for a second basic embodiment of the cell phone carrier.

[0046] FIGS. 4A to 4K show the details of assembly for a third basic embodiment of the cell phone carrier.

[0047] FIG. 5 shows a variation of the preferred embodiment which incorporates an identification badge holder

DETAILED DESCRIPTION—FIG. 1—TYPICAL EMBODIMENT

[0048] FIG. 1 displays the typical embodiment of the cell phone carrier. It illustrates many of the most important advantages of the invention. The most distinctive advantage is the flared mouth of the cell phone carrier in the open position. It is clear that cell phone 61 can thereby be quickly removed and replaced, and that this will be facilitated by handles 62. Another distinctive benefit is the enabling of very low cost assembly and imprinting of indicia 63, due to the simplicity of the design of the bag 5. This feature will greatly facilitate employing the cell phone carrier in advertising campaigns, and which will benefit both advertisers and consumers. Also shown is a typical drawstring means 51 and clipping means 53, which will allow for easy and convenient carrying on one's person.

DETAILED DESCRIPTION—FIG. 2A TO FIG. 2I—PREFERRED BASIC EMBODIMENT

[0049] These figures depict assembly, as well as views of the final product for the preferred embodiment of the cell

phone carrier. FIG. 2A shows two fabric panels, labeled 1 & 3, which have been cut to the appropriate shape. Fold lines 101, 103, 105 & 107 show where tabs will be folded over to serve as strain relief for the drawstring sleeve. If indicia have been attached, printed or woven into the panels 1 & 3, such indicia should be face down on the work surface.

[0050] FIG. 2B shows the same panels 1 and 3, along with the tabs 201, 203, 205 & 207 which are formed by folding at the fold lines 101, 103, 105 & 107 from FIG. 2A.

[0051] FIG. 2C shows panels 1 and 3, now with the tabs folded flat. Also shown is placement of fold lines 109 & 111.

[0052] FIG. 2D shows tabs 209 & 211, which are created by folding along fold lines 109 & 111 from 2C. Further shown in 1D is placement of the drawstring 51.

[0053] FIG. 2E shows tabs 209 & 211 now folded flat and seams 301 & 303, where the tabs have been sewn to create drawstring sleeves attached to panels 1 & 3.

[0054] FIG. 2F shows positioning of panel 1 beneath panel 3, in preparation for assembling the panels together into a single bag.

[0055] FIG. 2G shows the assembled bag, now labeled 3, which is formed by sewing seams 305, 307 & 309 along the edges of the panels.

[0056] FIG. 2H shows the finished product of the preferred embodiment, in the open position. The assembled bag from FIG. 2G has been turned inside out to hide unfinished seams and edges. Now only the finished sides of the seams are visible. This step would also now reveal any advertising indicia being used for this cell phone carrier. The fully assembled bag is now labeled 5. Also shown in FIG. 2H is clipping means 53, affixed to drawstring means 51, which can be used to attach the cell phone carrier to a belt or belt loop. The distinctive and attractive flared shape of the cell phone carrier mouth is now apparent in FIG. 2H.

[0057] FIG. 2I shows the cell phone carrier in the closed state.

[0058] Some additional remarks should be made about the assembly process depicted in FIGS. 2A to 2I. This represents only the logical and typical steps involved. This sequence may not be the most efficient from the standpoint of standard manufacturing processes. Also, some means other than sewing could be used to assemble the cell phone carrier. For materials such as nylon, the seams might be formed by heat fusing rather than sewing. Additional finishing touches might be applied to achieve a higher quality product. An example would be to serge the seams to inhibit unraveling of the panel edges or fraying of the seams.

DETAILED DESCRIPTION—FIG. 3A THROUGH FIG. 3I—SECOND BASIC EMBODIMENT

[0059] This sequence of Figs shows assembly of a cell phone carrier starting with a single panel of material, rather than the two panels discussed in the preferred embodiment. Other than that, this sequence process closely parallels that for the two panel process depicted in FIGS. 2A to 2I.

[0060] FIG. 3A shows fold lines 115 & 117 on panel of material 11. As in the preferred embodiment, indicia if present should be on the side of panel 11 which is face down.

[0061] FIG. 3B shows tabs 215 & 217 created by folding along lines 115 & 117 from FIG. 3A.

[0062] FIG. 3C shows tabs 215 & 217 now folded flat, and the location of fold line 119.

[0063] FIG. 3D shows tab 219 created by folding along line 119 from FIG. 3C. Also shown is the placement of drawstring means 51.

[0064] FIG. 3E shows tab 219 now folded flat and sewn down with seam 311. Also shown is fold line 121.

[0065] FIG. 3F shows the result of folding the left side of panel 11 along the fold line 121, and beneath the right side of panel 11.

[0066] FIG. 3G shows the result of laying the folded panel flat and sewing seams 313 and 315 to create a bag from the single panel.

[0067] FIG. 3H shows the result of turning the assembly from FIG. 3G inside out. This embodiment of the cell phone carrier is seen to also have a distinctive and attractive asymmetrically flared shape. This embodiment can also integrate an attaching means 53 affixed to the ends of the drawstring means 51. The fully assembled bag is now labeled 13.

[0068] FIG. 3I shows this embodiment of the cell phone carrier in the closed state.

[0069] Similar remarks to those at the end of the preferred embodiment section apply here as well. Those concerned variations in order of assembly, variations in means to assemble the material panels, and nicer finishing touches such as serging.

DETAILED DESCRIPTION—FIG. 4A TO FIG. 4K—THIRD BASIC EMBODIMENT

[0070] These figures illustrate the assembly and finished product for the third basic embodiment of the cell phone carrier. This embodiment is assembled from material which is stretchable. This allows the bag to be formed from a nearly rectangular material panel, rather than the shaped panels used for the preferred and second basic embodiments. In use, a means is then used to stretch the opening of the bag and at that point achieve a bag with a flared opening.

[0071] FIG. 4A shows panel of material 21 which is stretchable. Fold lines 125 & 127 are also shown. As in previous embodiments, if indicia has been applied to panel 21, it should be face down.

[0072] FIG. 4B shows tabs 225 & 227 formed by folding along lines 125 & 127 from FIG. 4A.

[0073] FIG. 4C shows tabs 225 & 227 now folded flat. Also shown is the location of fold line 129.

[0074] FIG. 4D shows tab 229 which is created by folding along line 129 from FIG. 4C. Also shown is the placement of "draw-wire" means 55. This analog of the drawstring from means the previous two embodiments, must in this case be of a stiff and uncompressable material, such as wire or perhaps stiff plastic.

[0075] FIG. 4E shows tab 229 now folded flat over draw-wire means 55, and sewn down with seam 321. In this embodiment seam 321 must be a stretchable seam. In

previous remarks about using alternate methods to sewing for assembling panels together, some additional thought would be given to fusing tab 229 to the rest of panel 21. An intermittent fused seam could be used, which would still allow the stretchable material to flex. Also shown is fold line 131.

[0076] FIG. 4F shows the result of folding the left side of panel 21, along line 131 from FIG. 3E, and beneath the right side of panel 21.

[0077] FIG. 4G shows the result of laying the folded assembly flat and sewing seams 323 & 325 to form a single bag, now labeled 23. For this basic embodiment there is no need to use a stretchable seam, or intermittent fused seam, for seams 323 & 325. However these could be stretchable seams as well, which would afford a final assembly which could be stretched in all dimensions. This could yield a cell phone carrier which was usable with a wider variety of cell phones.

[0078] FIG. 4H shows the result of turning the assembly from FIG. 4G inside out. Note this assembly does not now have a flared shape. Also shown is clipping means 57, slid over the ends of draw-wire 55. Clipping means 57 must have a means of easily engaging and dis-engaging the clip action. As with previous embodiments, unfinished seams are now inside the cell phone carrier, and any indicia are now on the outside. The fully assembled bag section is now labeled 23.

[0079] FIG. 4I shows clipping means 57 now slid down to the edge of the bag mouth, and being attached to the mouth of the bag with attachment means 59.

[0080] FIG. 4J shows the finished version of this embodiment in the open state. When the bag is pulled open and clipping means 57 is engaged, the cell phone carrier now has the distinctive flared shape which will enable easy removal or insertion of a cell phone. Also shown is a typical attachment means 53, affixed to the ends of draw-wire 55, which will allow attachment to a belt or belt loop. FIG. 4K shows this embodiment of the cell phone carrier in the closed state. This is achieved by disengaging clipping means 57, and sliding it down the draw-wire 55 to close the cell phone carrier.

[0081] Similar remarks to those at the end of the preferred embodiment section apply here as well. Those concerned variations in order of assembly, variations in means to assemble material panels, and nicer finishing touches.

FIG. 5—DETAILED DESCRIPTION—EMBODIMENT INCORPORATING AN IDENTIFICATION BADGE HOLDER

[0082] This figure illustrates an embodiment of the cell phone carrier, which incorporates an identification badge holder 65. Electronic identification badges are in common use in the business world. A cell phone carrier which facilitates carrying one's badge as well as one's cell phone will be of great benefit. This embodiment could also employ advertising indicia, such as on the alternate side of the bag.

1. A cell phone carrier comprising:

- a. A suitably sized bag, which is of flexible material, which is assembled from one or more panels of mate-

rial or is woven or shaped into a single unit, and which has a flared mouth in the relaxed and unsecured state.

b. A means to mate a drawstring with the mouth of the bag, either continuously or at discrete points along the circumference of the mouth.

c. A means to serve as a drawstring for closing the bag.

2. A carrier as in claim 1 whose dimensions have been re-scaled to accommodate items larger or smaller than cell phones.

3. A carrier as in claim 1 which has been embellished with indicia.

4. A carrier as in claim 1 which is used to carry eyeglasses or sunglasses, or any of a variety of small electronic items such as calculators, palmtop or handheld computers, or personal organizers and contact managers.

5. A carrier as in claim 1 which has an attaching means affixed to the end of the drawstring means, which enables the user to attach the carrier to their clothing, such as to a belt or belt loop.

6. A carrier as in claim 1 which also incorporates one or more handles to facilitate quick opening of the bag.

7. A carrier as in claim 1 which incorporates an external identification card holder.

8. A carrier as in claim 1 which utilizes a padded or quilted material, to afford some measure of impact protection to the item being carried.

9. A carrier as in claim 1 which has a belt or strap formed from or affixed to the drawstring means.

10. A carrier as in claim 1, for which the material used for the bag has been treated, either before or after assembly, such as to make the material water-repellant.

11. A cell phone carrier comprising:

a. A suitably sized bag of flexible and stretchable material, which is assembled from one or more panels of material or is woven or shaped into a single unit.

b. A means to mate a draw-wire means with the mouth of the bag, either continuously or at discrete points along the circumference of the mouth.

c. An uncompressable means to serve as a draw-wire for closing the bag, and to shape the mouth of the bag while it is open.

d. A clipping means assembled onto the incompressable draw-wire means, and also attached to the carrier bag at the mouth of the bag, such that the bag can be opened by pulling the clipping means along the drawstring means and then engaging it to maintain a flared shape to the mouth.

12. A carrier as in claim 11 whose dimensions have been re-scaled to accommodate items larger or smaller than cell phones.

13. A carrier as in claim 11 which has been embellished with indicia.

14. A carrier as in claim 11 which is used to carry eyeglasses or sunglasses, or any of a variety of small electronic items such as calculators, palmtop or handheld computers, or personal organizers and contact managers.

15. A carrier as in claim 11 which has an attaching means affixed to the end of the drawstring means, which enables the user to attach the carrier to their clothing, such as to a belt or belt loop.

16. A carrier as in claim 11 which also incorporates one or more handles to facilitate quick opening of the bag.

17. A carrier as in claim 11 which incorporates an external identification card holder.

18. A carrier as in claim 11 which utilizes a padded or quilted material, to afford some measure of impact protection to the item being carried.

19. A carrier as in claim 11 which has a belt or strap formed from or affixed to the drawstring means.

20. A carrier as in claim 11, for which the material used for the bag has been treated, either before or after assembly, such as to make the material water-repellant.

* * * * *

(ix) Evidence appendix

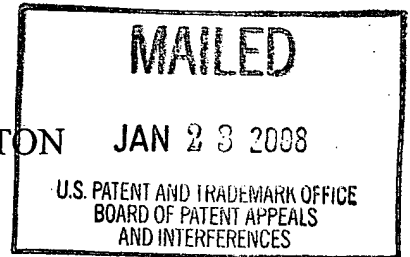
1. Copy of patent application 10/765,501 by David E. Huddleston filed on 1/26/2004 for "FLARED-OPENING DRAWSTRING CLOSURE CELL PHONE CARRIER"
2. A copy of the Notification of Non-Compliant Appeal sent on 7/19/06.
3. Copy of Final Action in regard to 10/765,501 executed by examiner Luan K. Bui on 1/11/2006
4. Copies of Internet Printed Publications listed in applicant's disclosure of Non Patent Literature Documents
5. Copy of MPEP § 2128 regarding Patent Office rules on what constitutes a "Printed Publication" suitable for disclosure
6. Copy of MPEP § 2173.01 and MPEP § 2173.02 regarding claim terminology and precision
7. Copy of MPEP § 706.7 regarding final rejection of claims.
8. Copies of applicable prior art citations by the examiner:
 - a. Copy of 213,580 by Minnie Lindheim filed 3/25/1879
 - b. Copy of 665,942 by J.N. Tabler filed 1/15/1901
 - c. Copy of US 2005/0072698 by Leo Kahl filed 9/2/2003
 - d. Copy of 4,974,709 by Thelma L. Furlow and Lisa M. Furlow filed 12/4/1990
 - e. Copy of 3,225,806 by Victor S. Pollak, et.al filed 12/28/1965
 - f. Copy of 4,215,629 by Alexander P. Janssen filed 8/5/1980

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID EUGENE HUDDLESTON JAN 23 2008

Application No. 10/765,501



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 10, 2008. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On August 21, 2005, appellant filed an Appeal Brief under 37 CFR § 41.37. A review of the file reveals that the "Summary of Claimed Subject Matter," as required by 41.37(c)(1)(v), is not properly set forth. 37 CFR § 41.37(c)(1)(v) which states:

(v) ***Summary of claimed subject matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The independent claim 11 must be mapped to the disclosure, including **specification page and line number**, and, if applicable, **drawing reference characters**.

Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

In addition, the appendix to the Brief needs to be submitted as a separate paper attached to the Brief as opposed to being within the body of the Brief.

According to 37 CFR 41.37 (c)(1)(viii) which states:

.... The copy of the claims should be a clean copy and should not include any marking such as brackets or underlining . . . should be double spaced and the appendix should start on a new page.

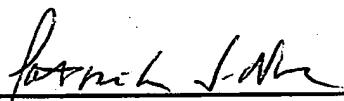
Appropriate correction required.

Accordingly, it is

ORDERED that the application is returned to the Examiner for:

- 1) notify applicants to file a paper providing a summary of the claimed subject matter as required by 37 CFR § 41.37(c)(1)(v);
- 2) consider the paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v);
- 3) a separate Appendix should be submitted to be attached to the Brief; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
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Deputy Chief Appeals Administrator
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PJN/dal

Application No. 10/765,501

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**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/765,501

Applicant(s)

HUDDLESTON, DAVID EUGENE

Examiner

BUI, LUAN

Art Unit

3728

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 21 August 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

4. The "Summary of Claimed Subject Matter" is deficient because independent claim 11 must be refer to the specification by page and line number, and to the drawing, if any

9. The appendix to the Brief needs to be submitted as a separate paper attached to the Brief as opposed to being within the body of the Brief.



Sharmalla Coates, Supervisor
Patent Appeal Center
571 272-5677



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,501	01/26/2004	David Eugene Huddleston	DEH1001	2563

7590 02/07/2008

DAVID E. HUDDLESTON
1352 BONNIEVIEW AVE.
LAKEWOOD, OH 44107

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/07/2008

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

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10/765,501	01/26/2004	David Eugene Huddleston	DEH1001	2563

7590 07/19/2006

DAVID E. HUDDLESTON
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LAKEWOOD, OH 44107

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

10/765,501

Applicant(s)

HUDDLESTON, DAVID EUGENE

Examiner

Laun Bui

Art Unit

3728

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 19 June 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification; whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

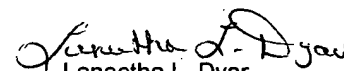
1. Must identify the real party by name or corporation.

2. Must include status of all claims and identify the appealed claims.

6. Each ground of rejection should be argued under its own heading.

7. A clean concise explanation of each independent claim is not present and should refer to the specification by page and line number or by paragraph number.

10. Please refer to the Appeal Brief 37 CFR 41.37.


Leneetha L. Dyar
Patent Appeal Specialist

Office Action Summary

Application No.

10/765,501

Applicant(s)

HUDDLESTON, DAVID EUGENE

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9,11-17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,9,11-17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/29/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Information Disclosure Statement

1. The information disclosure statement filed 3/29/2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because most of the non patent literature documents do not include title of the article, date (the article was printed on ...), number of page (s) .

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-5, 7, 9, 11-17 and 19 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "1.a.." (two places) and "1.a.," (two places), "opened.," "bag." in claim 1 and "unit.," "opening." "open." in claim 11 are incomplete and indefinite. The phrases "a drawstring" in claim 1, line 7 and "a stiff wire-like means" in claim 11, line, 8 is double recitation of line 5. Claims 12-17 and 19 depend from the canceled claim 10. In claims 7 and 17, the phrase "permits the identification card to be kept visible" is confusion and indefinite because it has no clear meaning as to how to be kept visible?

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3728

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 2 and 4 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lindheim (213,580) in view of Tabler (665,942). Lindheim discloses a carrier (A) comprising a suitably sized bag of flexible material formed from one or more panels of material and the bag having a flared opening when the bag is fully opened (Figure 2), a means to serve and mate as a drawstring (C, D) for closing and opening the bag (Figures 1-3). The bag of Lindheim is capable of holding a cell phone. Lindheim also discloses the other claimed limitations except for one or more handles being attached near the edge of the opening. Tabler teaches a bag (A) comprises one or more handles (23) for handling the bag. It would have been obvious to one having ordinary skill in the art in view of Tabler to modify the bag of Lindheim so the bag includes one or more handles attached near the edge of the opening for handling the bag such as for carrying the bag. The handle of the bag of Lindheim as modified is capable for using to open the bag. As to claims 2 and 4, the bag of Lindheim is capable to hold any of a variety of small electronic items as claimed.

7. Claim 3 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Kahl (2005/0072698). Lindheim as

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modified further fails to show the carrier comprises indicia. Kahl teaches a bag having a graphic indicia (Figure 4 and claim 7). It would have been obvious to one having ordinary skill in the art in view of Kahl to modify the bag of Lindheim as modified so it includes indicia for decorative purposes.

8. Claims 5 and 9 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Furlow et al. (4,974,709; hereinafter Furlow'709). Lindheim as modified further fails to show an attaching means being affixed to the end of the drawstring means. Furlow'709 shows a bag (10) having an attaching means (87, 89) affixed to the end of the straps (86, 88) (Figure 5) and clasping means (44) assembled onto the drawstring (Figure 4). It would have been obvious to one having ordinary skill in the art in view of Furlow'709 to modify the bag of Lindheim as modified so the end of the drawstring means includes an attaching means to facilitate attaching the bag to another object or folding the bag for storage. The bag of Lindheim as modified with the attaching means and the attaching means is capable for attaching the bag to the user's clothing such as a belt.

9. Claims 11-16 and 19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 5 above, and further in view of Janssen (4,215,629). Lindheim further fails to show the carrier comprises a stiff wire like means in lieu of the drawstring and a clasping means being assembled onto the stiff wire-like means. Janssen teaches a bag (282) having an opening (308) and a stiff wire-like means (303) (column 7, lines 16-23) for closing the opening or to maintain the opening in an open position (Figure 7). It would have

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been obvious to one having ordinary skill in the art in view of Furlow'709 and Janssen to modify the bag of Lindheim so the drawstring comprises a stiff wire-like means as taught by Janssen to maintain the shape of the opening in an open position and to facilitate inserting and/or removing items from the bag and the bag further includes a clasping means as taught by Furlow'709 for better securing the opening. As to claim 13, see claim 3 above. As to claim 14, see claim 4 above. As to claim 15, see claim 5 above. As to claim 16, see claim 1 above. As to claim 19, see claim 9 above.

10. Claims 7 and 17 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 11 above, and further in view of Pollak et al. (3,225,806; hereinafter Pollak'806). Lindheim further fails to show the bag comprises an external holder. Pollak'806 shows the bag (20) having an external holder (23, 24) (Figure 1). It would have been obvious to one having ordinary skill in the art in view of Pollak'806 to modify the bag of Lindheim so it includes an external holder to facilitate holding an additional item such as an identification card. It would have been obvious to one having ordinary skill in the art in view of Lindheim as modified so the external holder formed from a transparent material to allow visual access to the contents within the holder since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

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Applicant's arguments with respect to 12/1/2005 have been considered but are deemed to be moot in view of the new grounds of rejection.

1. The internet information sources may be permitted if applicant provides all the information as indicated above under Information Disclosure Statement section.

5. & 6. Applicant indicates that "Lindheim teaches away from the idea of the flared opening of the bag facilitating removal of items from the bag" is noted. This is not persuasive because the flared opening of Lindheim is also allowing for insertion of a user's hand into the bag to remove items from the bag which is considered equivalent to facilitating removal of items from the bag.

7. – 9. As a point of clarification, none of the rejection under 103(a) anticipate the claims of the instant invention. Lindheim and Kahl are related to a field of bag and Kahl is relied upon for nothing more than the bag comprises an indicia.

10. The flared opening as recited in claim 11 is read on the flared opening of Lindheim since there is no requirement for stretching the opening of the bag to form the flared opening as argued by Applicant.

11. The handles of Tabler are placed near the edge of the opening as indicated by the claim.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

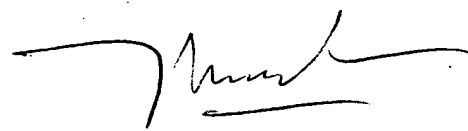
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
January 11, 2006



Luan K. Bui
Primary Examiner
Art Unit 3728

Notice of References Cited	Application/Control No. 10/765,501	Applicant(s)/Patent Under Reexamination HUDDLESTON, DAVID EUGENE	
	Examiner Luan K. Bui	Art Unit 3728	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-4,215,629	08-1980	Janssen, Alexander P.	99/403
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Substitute for form 1449/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 3

Complete if Known

Application Number	10/765501
Filing Date	1/26/2004
First Named Inventor	David E. Huddleston
Art Unit	
Examiner Name	
Attorney Docket Number	DEH1001

U. S. PATENT DOCUMENTS

U. S. PATENT DOCUMENTS					
Examiner Initials*	Cite No.	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ^{2 (if known)}			
UKB	1	US- 6,330,430 B1	12/11/2001	Henrik Jensfelt	various
	2	US- 6,454,146 B2	9/24/2002	Joshua M. Alis	various
	3	US- 6,367,672 B1	4/9/2002	Harvey Lind	various
	4	US- 6,315,182 B1	11/13/2001	Li-Fong Chen	various
	5	US- 5,957,357	9/28/1999	Robert Kallmann	various
	6	US- 5,850,954	12/22/1998	Kim Dong-Joo	various
	7	US- D362,541	9/26/1995	Michael Elder	various
	8	US- D368,800	4/16/1996	Joseph M. Shink	various
	9	US- D377,117	1/7/1997	Norman Klassen	various
	10	US- 6,123,240	9/26/2000	Lorraine M. Fowles	various
	11	US- 6,227,361 B1	5/8/2001	Donilee Grabb Salaza	various
	12	US- 5,653,336	8/5/1997	Erik Buonaiauto	various
	13	US- 6,568,576 B1	5/27/2003	Donald E. Godshaw	various
	14	US- 5,947,359	9/7/1999	Norio Yoshie	various
	15	US- 5,897,040	4/27/1999	Rod R. Ward	various
	16	US- 6,182,878 B1	2/6/2001	Enrico Racca	various
	17	US- 6,533,150 B1	3/18/2003	Philip F. Margo	various
	18	US- 6,478,205 B1	11/12/2002	Kouichiro Fujihashi	various
	19	US- 5,535,928	7/16/1996	Steven J. Herring	various

FOREIGN PATENT DOCUMENTS

[illegible]

Examiner Signature	L.A. Bui	Date Considered	11/1/06
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*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

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Substitute for form 1449/PTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Sheet 2 of 3**Complete if Known**

Application Number	10/765501
Filing Date	1/26/2004
First Named Inventor	David E. Huddleston
Art Unit	
Examiner Name	
Attorney Docket Number	DEH1001

U. S. PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
LVB	20	US- 6,006,969	12/28/1999	Dong-Joo Kim	various
	21	US- 6,076,789	6/20/2000	Barry D. Jackson	various
	22	US- 6,651,854 B1	11/25/2003	Marvin LaCoste	various
	23	US- 2,377,311	6/5/1945	Hugh P. Campbell	various
	24	US- 6,564,838 B1	5/20/2003	Halsey Cruikshank	various
	25	US- 4,608,283	8/26/1986	Ruth A. White	various
	26	US- 5,996,999	12/7/1999	Avis Joyce Casely	various
	27	US- 4,974,761	12/4/1990	Irma J. Luque	various
	28	US- 2,253,688	8/26/1941	Edwin D. Collins	various
	29	US- 665,942	1/15/1901	Jasper Newton Tabler	various
	30	US- 595,685	12/21/1897	Abraham Abraham	various
	31	US- D139,335	11/7/1944	Eric de Kolb	various
	32	US- D115,541	7/4/1939	Moe J. Cohen	various
	33	US- 5,351,868	10/4/1994	Robert J. Beletsky	various
	34	US- D382,996	9/2/1997	David Kopel	various
	35	US- D416,132	11/9/1999	Joe Sung-Ho Tan	various
	36	US- 5,511,704	4/30/1996	John E. Linderer	various
	37	US- 5,833,100	11/10/1998	Dong-Joo Kim	various
	38	US- D19,591 D19,591	1/21/1890	Shubael Cottle	various

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear	T ⁴
		Country Code ³ Number ⁴ Kind Code ⁵ (if known)				

Examiner
Signature

L.K. Bui

Date
Considered

1/11/06

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(Use as many sheets as necessary)

Complete if Known

Application Number	10/765501
Filing Date	1/26/2004
First Named Inventor	David E. Huddleston
Art Unit	
Examiner Name	
Attorney Docket Number	DEH1001

Sheet

3

of

3

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
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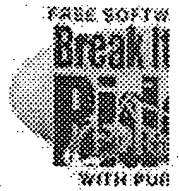
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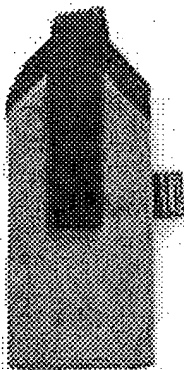
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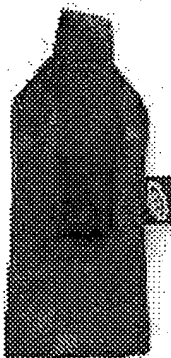


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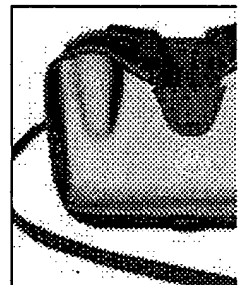
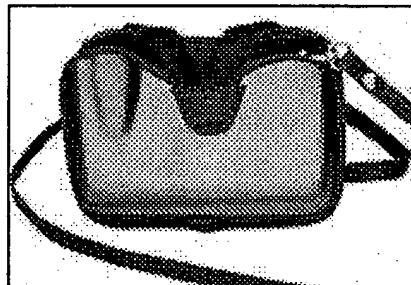
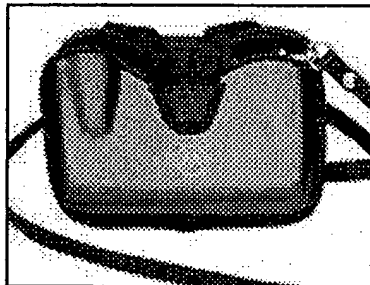


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Psst!

Pamper your cellphone with Poire pouch

By **Pamela Sitt**

Seattle Times staff reporter

If you're like me, you feel naked without your cellphone.

Given my attachment, you'd think I'd take better care of my little pet. But I don't. I've been known to dump it out of my purse, crack the face under a stiletto heel and even drop it in the toilet.

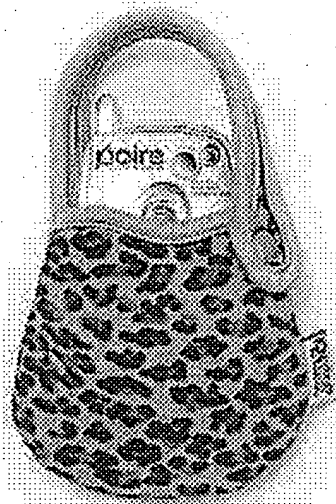
If we can dress up toy dogs, why not dress up your *other* best friend?

Poire (French for "pear") protective pouches are the latest Japanese contribution to U.S. cellphone culture. Imported by Portland-based Mixx Inc., they are quickly spreading to Hollywood — Sandra Bullock and Tiffani Thiessen have them, as does the cast of ABC's "Hope and Faith."

"We'd never seen anything quite like it. It's so cute, it kind of hit our barometer just in the right way," said Juliette Fassett, president of Mixx Inc. "My phone is really small, and my bag is really big. I was always losing my phone."

Besides keeping your precious phone snug from dirt, grime and the remote possibility of spontaneous combustion — it's happened, though not to me — Poire pockets are stylish and fun. Pick from stripes, flowers, polka dots, animal prints or teddy bears to suit your personality.

And at \$10-\$20 a pop (available at Olivine, 5344 Ballard Ave. N.W., 206-706-4188), your cellphone can be the best-dressed in town.



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Treat your cellphone to Poire, which means pear in French but is a Japanese import that keeps phones safe and snug.

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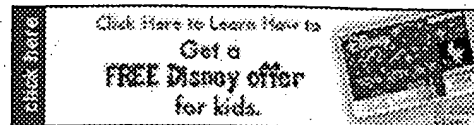
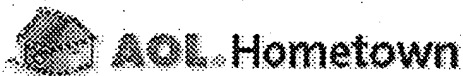
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Cell Phone Pouch

by Priscilla Hewitt

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This pouch also works for sunglasses! It has both a belt loop and a strap.

Difficulty level: ******(advanced beginner)

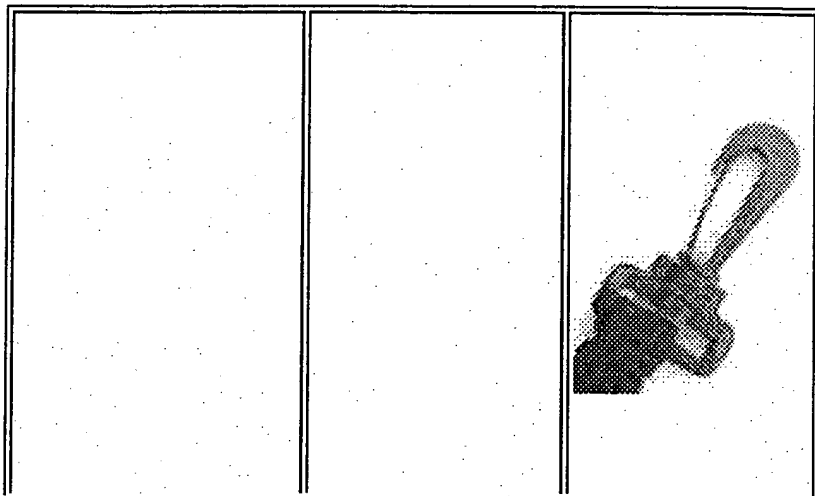
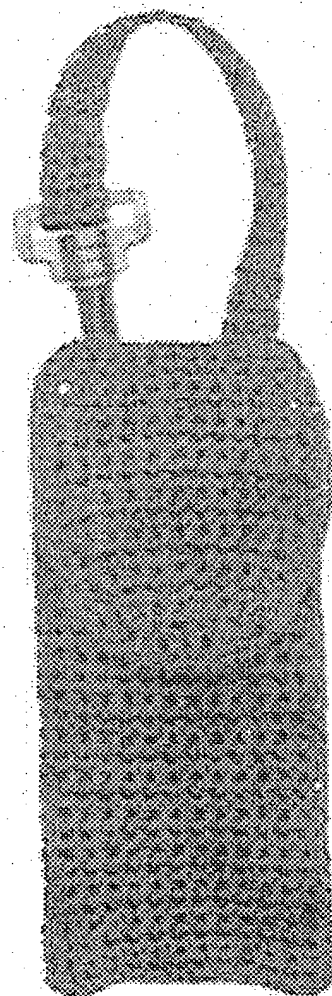
Materials: 100 yds. Speed-Cro-Sheen (size 3 thread), crochet hooks size E (3.50 mm) and size C (2.75 mm), or size needed to achieve gauge; 3" length of 3/4" velcro strip, snap buckle (see photo below), 3/4" luxite or cabone ring, yarn needle, sewing needle and matching thread.

Gauge: Rows 2-14 = 2 3/8" x 2 3/8"

Finished size closed: About 2 1/2" x 6"

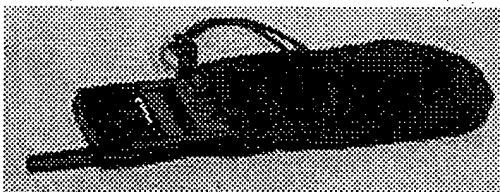
To work a sc dec over 2 sts: Insert hook in the first indicated st and pull up a loop, insert hook in next indicated st and pull up a loop; yo and pull through all 3 remaining loops on hook.

Pattern note: Work tightly for best results and to maintain gauge.



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Mobile Phone Pouch



Mobile Phone Pouch

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Price: \$21.00

Mobile Phone Pouch (Possum Pam)

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We hope you have an enjoyable shopping experience within our store. Please contact us if you have any suggestions and comments about either our site or any of our products.



Stuart is a part-time painter/artist, father of three, the pioneer of the mussel-farming industry in NZ and a developer of the anti-arthritis mussel extract known as Seatone™

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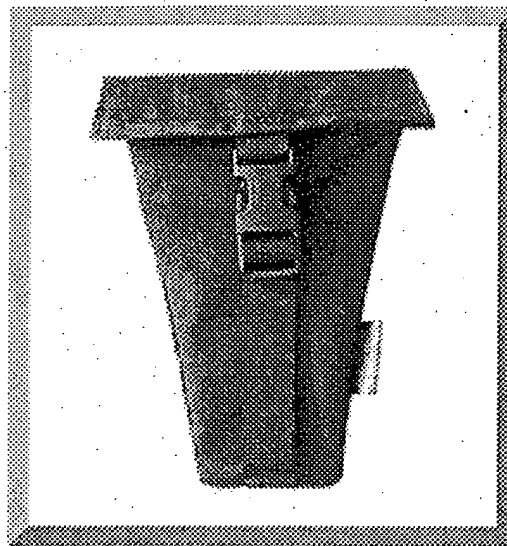
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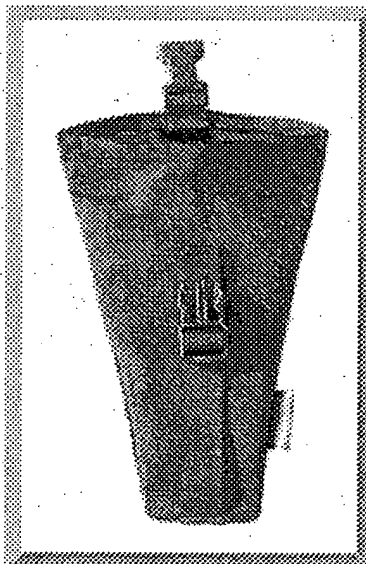
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Rainproof pouch for carrying mobil phones, GPS units, and other important devices. Sealed seams keep water out. Attach this pouch securely to a belt, fannypack, or strap and keep your valuables handy.

Hold devices up to 6 inches high, 2 inches wide, and 1.5 inches deep. Pouch is 7 inches tall when closed. Durable buckle allows one-handed opening and closing.

\$19.00 Color:



See our other Phone Pouches and Phone Chart
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Hi-Tek Phone Pouch

Style #: 981

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Size: 7"w x 6 1/2"h x 2" deep

Material: 1680-D Nylon

Features: A perfect way to keep your cell phone safe and secure. Attaches quickly to any shoulder strap or can also attach to a belt using the web strap with Velcro. The elastic pen loop offers a convenient way to hold a writing instrument. This item makes a great employee gift and is a proven winner for catalog programs or company stores.

Color: Black

Imprint Size: 11/2 " wide x 11/2" high

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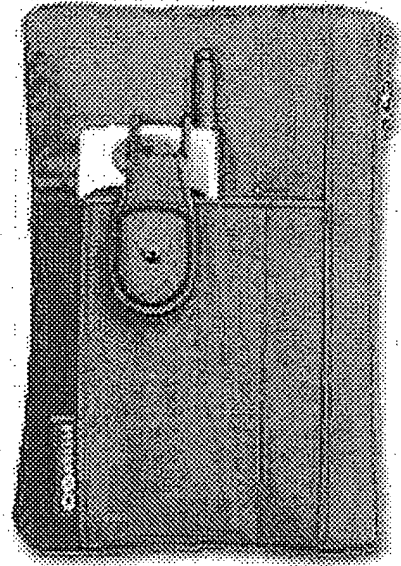
Phone Pouch

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A great looking pouch designed to hold your phone as well as other useful necessities.

- ★ Holds mobile phone
- ★ Extra compartment secured with a zipper to store a wallet, tickets, makeup etc
- ★ Zip back pocket (that sits against body) to store valuables.
- ★ Adjustable shoulder strap
- ★ Modern design with combination of textures (rubberised fabric, semi mat polyester and elastic)
- ★ 11.5cm (4.5 inches) wide x 17.5cm (7 inches) high

Price: \$28.95



II. APPLICATIONS WHICH HAVE ISSUED INTO U.S. PATENTS

A 35 U.S.C. 102(e) Rejection Cannot Rely on Matter Which Was Canceled from the Application and Thus Did Not Get Published in the Issued Patent

Canceled matter in the application file of a U.S. patent cannot be relied upon in a rejection under 35 U.S.C. 102(e). *Ex Parte Stalego*, 154 USPQ 52, 53 (Bd. App. 1966). The canceled matter only becomes available as prior art as of the date the application issues into a patent since this is the date the application file *>history< becomes available to the public. *In re Lund*, 376 F.2d 982, 153 USPQ 625 (CCPA 1967). For more information on available prior art for use in 35 U.S.C. 102(e) rejections see MPEP § 2136.02.

III. FOREIGN APPLICATIONS OPEN FOR PUBLIC INSPECTION (LAID OPEN APPLICATIONS)

Laid Open Applications May Constitute "Published" Documents

When the specification is not issued in printed form but is announced in an official journal and anyone can inspect or obtain copies, it is sufficiently accessible to the public to constitute a "publication" within the meaning of 35 U.S.C. 102(a) and (b). See *In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981).

Older cases have held that laid open patent applications are not "published" and cannot constitute prior art. *Ex parte Haller*, 103 USPQ 332 (Bd. App. 1953). However, whether or not a document is "published" for the purposes of 35 U.S.C. 102 and 103 depends on how accessible the document is to the public. As technology has made reproduction of documents easier, the accessibility of the laid open applications has increased. Items provided in easily reproducible form have thus become "printed publications" as the phrase is used in 35 U.S.C. 102. *In re Wyer*, 655 F.2d 221, 226, 210 USPQ 790, 794 (CCPA 1981) (Laid open Australian patent application held to be a "printed publication" even though only the abstract was published because it was laid open for public inspection, microfilmed, "diaz copies" were distributed to five suboffices having suitable reproduction equipment and the diazo copies were available for sale.). The

contents of a foreign patent application should not be relied upon as prior art until the date of publication (i.e., the insertion into the laid open application) can be confirmed by an examiner's review of a copy of the document. See MPEP § 901.05.

IV. PENDING U.S. APPLICATIONS

As specified in 37 CFR 1.14(a), all pending U.S. applications are preserved in confidence except for published applications, reissue applications, and applications in which a request to open the complete application to inspection by the public has been granted by the Office (37 CFR 1.11(b)). However, if an application that has not been published has an assignee or inventor in common with the application being examined, a rejection will be proper in some circumstances. For instance, when the claims between the two applications are not independent or distinct, a provisional double patenting rejection is made. See MPEP § 804. If the copending applications differ by at least one inventor and at least one of the applications would have been obvious in view of the other, a provisional rejection over 35 U.S.C. 102(e) or 103 is made when appropriate. See MPEP § 706.02(f)(2), § 706.02(k), § 706.02(l)(1), and § 706.02(l)(3).

See MPEP § 706.02(a), § 804 and § 2136 *et seq.* for information pertaining to rejections relying on U.S. application publications.

2128 "Printed Publications" as Prior Art

A REFERENCE IS A "PRINTED PUBLICATION" IF IT IS ACCESSIBLE TO THE PUBLIC

A reference is proven to be a "printed publication" "upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." *In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981) (quoting *I.C.E. Corp. v. Armco Steel Corp.*, 250 F. Supp. 738, 743, 148 USPQ 537, 540 (SDNY 1966)) ("We agree that 'printed publication' should be approached as a unitary concept. The traditional dichotomy between 'printed' and 'publication' is no longer valid. Given the state of technology in document duplication, data storage, and data retrieval systems, the 'probability of dissemination' of an item very often has little to do with

whether or not it is 'printed' in the sense of that word when it was introduced into the patent statutes in 1836. In any event, interpretation of the words 'printed' and 'publication' to mean 'probability of dissemination' and 'public accessibility' respectively, now seems to render their use in the phrase 'printed publication' somewhat redundant.") *In re Wyer*, 655 F.2d at 226, 210 USPQ at 794.

See also *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986) (Starlight Archery argued that Carella's patent claims to an archery sight were anticipated under 35 U.S.C. 102(a) by an advertisement in a Wisconsin Bow Hunter Association (WBHA) magazine and a WBHA mailer prepared prior to Carella's filing date. However, there was no evidence as to when the mailer was received by any of the addressees. Plus, the magazine had not been mailed until 10 days after Carella's filing date. The court held that since there was no proof that either the advertisement or mailer was accessible to any member of the public before the filing date there could be no rejection under 35 U.S.C. 102(a).).

ELECTRONIC PUBLICATIONS AS PRIOR ART

Status as a "Printed Publication"

An electronic publication, including an on-line database or Internet publication, is considered to be a "printed publication" within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 227, 210 USPQ 790, 795 (CCPA 1981) ("Accordingly, whether information is printed, handwritten, or on microfilm or a magnetic disc or tape, etc., the one who wishes to characterize the information, in whatever form it may be, as a 'printed publication' * * * should produce sufficient proof of its dissemination or that it has otherwise been available and accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents." (citations omitted)). See also *Amazon.com v. Barnesandnoble.com*, 73 F. Supp. 2d 1228, 53 USPQ2d 1115, 1119 (W.D. Wash. 1999) (Pages from a website were relied on by defendants as an anticipatory reference (to no avail), however status of the reference as prior art was not challenged.); *In re*

Epstein, 32 F.3d 1559, 31 USPQ2d 1817 (Fed. Cir. 1994) (Database printouts of abstracts which were not themselves prior art publications were properly relied as providing evidence that the software products referenced therein were "first installed" or "released" more than one year prior to applicant's filing date.).

The Office policy requiring recordation of the field of search and search results (see MPEP § 719.05) weighs in favor of finding that Internet and on-line database references cited by the examiner are "accessible to persons concerned with the art to which the document relates and thus most likely to avail themselves of its contents." *Wyer*, 655 F.2d at 221, 210 USPQ at 790. Office copies of an electronic document must be retained if the same document may not be available for retrieval in the future. This is especially important for sources such as the Internet and online databases.

Date of Availability

Prior art disclosures on the Internet or on an on-line database are considered to be publicly available as of the date the item was publicly posted. If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art. Examiners may ask the Scientific and Technical Information Center to find the earliest date of publication. See MPEP § 901.06(a), paragraph IV. G.

Extent of Teachings Relied Upon

An electronic publication, like any publication, may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art. See MPEP § 2121.01 and § 2123. Note, however, that if an electronic document which is the abstract of a patent or printed publication is relied upon in a rejection under 35 U.S.C. 102 or 103, only the text of the abstract (and not the underlying document) may be relied upon to support the rejection. In situations where the electronic version and the published paper version of the same or a corresponding patent or printed publication differ appreciably, each may need to be cited and relied upon as independent references based on what they disclose.

Internet Usage Policy

See MPEP § 904.02(c) for the portions of the Internet Usage Policy pertaining to Internet searching and documenting search strategies. See MPEP § 707.05 for the proper citation of electronic documents.

EXAMINER NEED NOT PROVE ANYONE ACTUALLY LOOKED AT THE DOCUMENT

One need not prove someone actually looked at a publication when that publication is accessible to the public through a library or patent office. See *In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981); *In re Hall*, 781 F.2d 897, 228 USPQ 453 (Fed. Cir. 1986).

2128.01 Level of Public Accessibility Required [R-3]

I. A THESIS PLACED IN A UNIVERSITY LIBRARY MAY BE PRIOR ART IF SUFFICIENTLY ACCESSIBLE TO THE PUBLIC

A doctoral thesis indexed and shelved in a library is sufficiently accessible to the public to constitute prior art as a "printed publication." *In re Hall*, 781 F.2d 897, 228 USPQ 453 (Fed. Cir. 1986). Even if access to the library is restricted, a reference will constitute a "printed publication" as long as a presumption is raised that the portion of the public concerned with the art would know of the invention. *In re Bayer*, 568 F.2d 1357, 196 USPQ 670 (CCPA 1978).

In *In re Hall*, general library cataloging and shelving practices showed that a doctoral thesis deposited in university library would have been indexed, cataloged and shelved and thus available to the public before the critical date. Compare *In re Cronyn*, 890 F.2d 1158, 13 USPQ2d 1070 (Fed. Cir. 1989) wherein doctoral theses were shelved and indexed by index cards filed alphabetically by student name and kept in a shoe box in the chemistry library. The index cards only listed the student name and title of the thesis. Two of three judges held that the students' theses were not accessible to the public. The court reasoned that the theses had not been either cataloged or

indexed in a meaningful way since thesis could only be found if the researcher's name was known, but the name bears no relationship to the subject of the thesis. One judge, however, held that the fact that the theses were shelved in the library was enough to make them sufficiently accessible to the public. The nature of the index was not determinative. This judge relied on prior Board decisions (*Gulliksen v. Halberg*, 75 USPQ 252, 257 (Bd. App. 1937) and *Ex parte Hershberger*, 96 USPQ 54, 56 (Bd. App. 1952)), which held that shelving a single copy in a public library makes the work a "printed publication." It should be noted that these Board decisions have not been expressly overruled but have been criticized in other decisions. See *In re Tenney*, 254 F.2d 619, 117 USPQ 348 (CCPA 1958) (concurring opinion by *J. Rich*) (A document, of which there is but one copy, whether it be handwritten, typewritten or on microfilm, may be technically accessible to anyone who can find it. Such a document is not "printed" in the sense that a printing press has been used to reproduce the document. If only technical accessibility were required "logic would require the inclusion within the term [printed] of all unprinted public documents for they are all 'accessible.' While some tribunals have gone quite far in that direction, as in the 'college thesis cases' I feel they have done so unjustifiably and on the wrong theory. Knowledge is not in the possession of the public where there has been no dissemination, as distinguished from technical accessibility..." The real significance of the word "printed" is grounded in the "probability of wide circulation." See also *Deep Welding, Inc. v. Sciaky Bros.*, 417 F.2d 1227, 163 USPQ 144 (7th Cir. 1969) (calling the holding of *Ex parte Hershberger* "extreme"). Compare *In re Bayer*, 568 F.2d 1357, 196 USPQ 670 (CCPA 1978) (A reference will constitute a "printed publication" as long as a presumption is raised that the portion of the public concerned with the art would know of the invention even if accessibility is restricted to only this part of the public. But accessibility to applicant's thesis was restricted to only three members of a graduate committee. There can be no presumption that those concerned with the art would have known of the invention in this case.).

II. ORALLY PRESENTED PAPER CAN CONSTITUTE A "PRINTED PUBLICATION" IF WRITTEN COPIES ARE AVAILABLE WITHOUT RESTRICTION

A paper which is orally presented in a forum open to all interested persons constitutes a "printed publication" if written copies are disseminated without restriction. *Massachusetts Institute of Technology v. AB Fortia*, 774 F.2d 1104, 1109, 227 USPQ 428, 432 (Fed. Cir. 1985) (Paper orally presented to between 50 and 500 persons at a scientific meeting open to all persons interested in the subject matter, with written copies distributed without restriction to all who requested, is a printed publication. Six persons requested and obtained copies.).

III. INTERNAL DOCUMENTS INTENDED TO BE CONFIDENTIAL ARE NOT "PRINTED PUBLICATIONS"

Documents and items only distributed internally within an organization which are intended to remain confidential are not "printed publications" no matter how many copies are distributed. There must be an existing policy of confidentiality or agreement to remain confidential within the organization. Mere intent to remain confidential is insufficient. *In re George*, 2 USPQ2d 1880 (Bd. Pat. App. & Inter. 1987) (Research reports disseminated in-house to only those persons who understood the policy of confidentiality regarding such reports are not printed publications even though the policy was not specifically stated in writing.); *Garret Corp. v. United States*, 422 F.2d 874, 878, 164 USPQ 521, 524 (Ct. Cl. 1970) ("While distribution to government agencies and personnel alone may not constitute publication ... distribution to commercial companies without restriction on use clearly does."); *Northern Telecom Inc. v. Datapoint Corp.*, 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990) (Four reports on the AESOP-B military computer system which were not under security classification were distributed to about fifty organizations involved in the AESOP-B project. One document contained the legend "Reproduction or further dissemination is not authorized." The other documents were of the class that would contain this legend. The documents were housed in Mitre Corporation's library. Access to this library was restricted to those involved in the AESOP-B project.

The court held that public access was insufficient to make the documents "printed publications.").

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IV. PUBLICLY DISPLAYED DOCUMENTS CAN CONSTITUTE A "PRINTED PUBLICATION" EVEN IF THE DURATION OF DISPLAY IS FOR ONLY A FEW DAYS AND THE DOCUMENTS ARE NOT DISSEMINATED BY COPIES OR INDEXED IN A LIBRARY OR DATABASE

A publicly displayed document where persons of ordinary skill in the art could see it and are not precluded from copying it can constitute a "printed publication," even if it is not disseminated by the distribution of reproductions or copies and/or indexed in a library or database. As stated in *In re Klopstein*, 380 F.3d 1345, 1348, 72 USPQ2d 1117, 1119 (Fed. Cir. 2004), "the key inquiry is whether or not a reference has been made 'publicly accessible.'" Prior to the critical date, a fourteen-slide presentation disclosing the invention was printed and pasted onto poster boards. The printed slide presentation was displayed with no confidentiality restrictions for approximately three cumulative days at two different industry events. 380 F.3d at 1347, 72 USPQ2d at 1118. The court noted that "an entirely oral presentation that includes neither slides nor copies of the presentation is without question not a 'printed publication' for the purposes of 35 U.S.C. § 102(b). Furthermore, a presentation that includes a transient display of slides is likewise not necessarily a 'printed publication.'" 380 F.3d at 1349 n.4, 72 USPQ2d at 1122 n.4. In resolving whether or not a temporarily displayed reference that was neither distributed nor indexed was nonetheless made sufficiently publicly accessible to count as a "printed publication" under 35 U.S.C. 102(b), the court considered the following factors: "the length of time the display was exhibited, the expertise of the target audience, the existence (or lack thereof) of reasonable expectations that the material displayed would not be copied, and the simplicity or ease with which the material displayed could have been copied." 380 F.3d at 1350, 72 USPQ2d at 1120. Upon reviewing the above factors, the court concluded that the display "was sufficiently publicly accessible to count as a 'printed publication.'" 380 F.3d at 1352, 72 USPQ2d at 1121.<

2128.02 Date Publication Is Available as a Reference

DATE OF ACCESSIBILITY CAN BE SHOWN THROUGH EVIDENCE OF ROUTINE BUSINESS PRACTICES

Evidence showing routine business practices can be used to establish the date on which a publication became accessible to the public. Specific evidence showing when the specific document actually became available is not always necessary. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir.), *cert. denied*, 988 U.S. 892 (1988) (Court held that evidence submitted by Intel regarding undated specification sheets showing how the company usually treated such specification sheets was enough to show that the sheets were accessible by the public before the critical date.); *In re Hall*, 781 F.2d 897, 228 USPQ 453 (Fed. Cir. 1986) (Librarian's affidavit establishing normal time frame and practice for indexing, cataloging and shelving doctoral theses established that the thesis in question would have been accessible by the public before the critical date.).

A JOURNAL ARTICLE OR OTHER PUBLICATION BECOMES AVAILABLE AS PRIOR ART ON DATE OF IT IS RECEIVED BY A MEMBER OF THE PUBLIC

A publication disseminated by mail is not prior art until it is received by at least one member of the public. Thus, a magazine or technical journal is effective as of its date of publication (date when first person receives it) not the date it was mailed or sent to the publisher. *In re Schlittler*, 234 F.2d 882, 110 USPQ 304 (CCPA 1956).

2129 Admissions as Prior Art [R-3]

I. ADMISSIONS BY APPLICANT CONSTITUTE PRIOR ART

A statement by an applicant during prosecution identifying the work of another as "prior art" is an admission that that work is available as prior art against the claims, regardless of whether the admitted prior art would otherwise qualify as prior art under the statutory categories of 35 U.S.C. 102. *Riverwood Int'l*

Corp. v. R.A. Jones & Co., 324 F.3d 1346, 1354, 66 USPQ2d 1331, 1337 (Fed. Cir. 2003). However, even if labeled as "prior art," the work of the same inventive entity may not be considered prior art against the claims unless it falls under one of the statutory categories. *Id.*; see also *Reading & Bates Construction Co. v. Baker Energy Resources Corp.*, 748 F.2d 645, 650, 223 USPQ 1168, 1172 (Fed. Cir. 1984) ("[W]here the inventor continues to improve upon his own work product, his foundational work product should not, without a statutory basis, be treated as prior art solely because he admits knowledge of his own work. It is common sense that an inventor, regardless of an admission, has knowledge of his own work.").

Consequently, the examiner must determine whether the subject matter identified as "prior art" is applicant's own work, or the work of another. In the absence of another credible explanation, examiners should treat such subject matter as the work of another.

II. DISCUSSION OF PRIOR ART IN SPECIFICATION

Where the specification identifies work done by another as "prior art," the subject matter so identified is treated as admitted prior art. *In re Nomiya*, 509 F.2d 566, 571, 184 USPQ 607, 611 (CCPA 1975) (holding applicant's labeling of two figures in the application drawings as "prior art" to be an admission that what was pictured was prior art relative to applicant's improvement).

III. JEPSON CLAIMS

Drafting a claim in *Jepson* format (i.e., the format described in 37 CFR 1.75(e); see MPEP § 608.01(m)) is taken as an implied admission that the subject matter of the preamble is the prior art work of another. *In re Fout*, 675 F.2d 297, 301, 213 USPQ 532, 534 (CCPA 1982) (holding preamble of *Jepson*-type claim to be admitted prior art where applicant's specification credited another as the inventor of the subject matter of the preamble). However, this implication may be overcome where applicant gives another credible reason for drafting the claim in *Jepson* format. *In re Ehrreich*, 590 F.2d 902, 909-910, 200 USPQ 504, 510 (CCPA 1979) (holding preamble not to be admitted prior art where applicant explained that the *Jepson*

the various elements do not function simultaneously, are not directly functionally related, do not directly intercooperate, and/or serve independent purposes.)<

2173 Claims Must Particularly Point Out and Distinctly Claim the Invention

The primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent. A secondary purpose is to provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability and whether the specification meets the criteria of 35 U.S.C. 112, first paragraph with respect to the claimed invention.

2173.01 Claim Terminology [R-2]

A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as **>any special meaning assigned to a term is clearly set forth in the specification. See MPEP § 2111.01.< Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

2173.02 Clarity and Precision [R-3]

The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of partic-

ularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:

(A) The content of the particular application disclosure;

(B) The teachings of the prior art; and

(C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). See also *In re Larsen*, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished) (The preamble of the *Larsen* claim recited only a hanger and a loop but the body of the claim positively recited a linear member. The court observed that the totality of all the limitations of the claim and their interaction with each other must be considered to ascertain the inventor's contribution to the art. Upon review of the claim in its entirety, the court concluded that the claim at issue apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112 paragraph 2.). >See also *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004) ("The requirement to 'distinctly' claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles....Only when a claim remains

insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite.”).

Accordingly, a claim term that is not used or defined in the specification is not indefinite if the meaning of the claim term is discernible. *Bancorp Services, L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1372, 69 USPQ2d 1996, 1999-2000 (Fed. Cir. 2004) (holding that the disputed claim term “surrender value protected investment credits” which was not defined or used in the specification was discernible and hence not indefinite because “the components of the term have well recognized meanings, which allow the reader to infer the meaning of the entire phrase with reasonable confidence”).<

If the language of the claim is such that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement, a rejection of the claim under 35 U.S.C. 112, second paragraph, would be appropriate. See *Morton Int'l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470, 28 USPQ2d 1190, 1195 (Fed. Cir. 1993). However, if the language used by applicant satisfies the statutory requirements of 35 U.S.C. 112, second paragraph, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. 112, second paragraph, rather, the examiner should suggest improved language to the applicant.

For example, a claim recites “a suitable liquid such as the filtrate of the contaminated liquid to be filtered and solids of a filtering agent such as perlite, cellulose powder, etc.” The mere use of the phrase “such as” in the claim does not by itself render the claim indefinite. Office policy is not to employ *per se* rules to make technical rejections. Examples of claim language which have been held to be indefinite set forth in MPEP § 2173.05(d) are fact specific and should not be applied as *per se* rules. The test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). If one skilled in the art is able to ascertain in the example above, the meaning of the terms “suitable liquid” and “solids of a filtering agent” in light of the specification, 35 U.S.C. 112,

second paragraph, is satisfied. If upon review of the claim as a whole in light of the specification, the examiner determines that a rejection under 35 U.S.C. 112, second paragraph, is not appropriate in the above-noted example, but is of the opinion that the clarity and the precision of the language can be improved by the deletion of the phrase “such as” in the claim, the examiner may make such a suggestion to the applicant. If applicant does not accept the examiner’s suggestion, the examiner should not pursue the issue.

If upon review of a claim in its entirety, the examiner concludes that a rejection under 35 U.S.C. 112, second paragraph, is appropriate, such a rejection should be made and an analysis as to why the phrase(s) used in the claim is “vague and indefinite” should be included in the Office action. If applicants traverse the rejection, with or without the submission of an amendment, and the examiner considers applicant’s arguments to be persuasive, the examiner should indicate in the next Office communication that the previous rejection under 35 U.S.C. 112, second paragraph, has been withdrawn and provide an explanation as to what prompted the change in the examiner’s position (e.g., examiners may make specific reference to portions of applicant’s remarks that were considered to be the basis as to why the previous rejection was withdrawn).

By providing an explanation as to the action taken, the examiner will enhance the clarity of the prosecution history record. As noted by the Supreme Court in *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002), a clear and complete prosecution file record is important in that “[p]rosecution history estoppel requires that the claims of a patent be interpreted in light of the proceedings in the PTO during the application process.” In *Festo*, the court held that “a narrowing amendment made to satisfy any requirement of the Patent Act may give rise to an estoppel.” With respect to amendments made to comply with the requirements of 35 U.S.C. 112, the court stated that “[i]f a § 112 amendment is truly cosmetic, then it would not narrow the patent’s scope or raise an estoppel. On the other hand, if a § 112 amendment is necessary and narrows the patent’s scope—even if only for the purpose of better description—estoppel may apply.” *Id.*, at 1840, 62 USPQ2d at 1712. The court

further stated that “when the court is unable to determine the purpose underlying a narrowing amendment—and hence a rationale for limiting the estoppel to the surrender of particular equivalents—the court should presume that the patentee surrendered all subject matter between the broader and the narrower language...the patentee should bear the burden of showing that the amendment does not surrender the particular equivalent in question.” *Id.*, at 1842, 62 USPQ2d at 1713. Thus, whenever possible, the examiner should make the record clear by providing explicit reasoning for making or withdrawing any rejection related to 35 U.S.C. 112, second paragraph.

2173.03 Inconsistency Between Claim *>and< Specification Disclosure or Prior Art [R-1] [R-1]

Although the terms of a claim may appear to be definite, inconsistency with the specification disclosure or prior art teachings may make an otherwise definite claim take on an unreasonable degree of uncertainty. *In re Cohn*, 438 F.2d 989, 169 USPQ 95 (CCPA 1971); *In re Hammack*, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970). In *Cohn*, the claim was directed to a process of treating a surface with a corroding solution until the metallic appearance is supplanted by an “opaque” appearance. Noting that no claim may be read apart from and independent of the supporting disclosure on which it is based, the court found that the description, definitions and examples set forth in the specification relating to the appearance of the surface after treatment were inherently inconsistent and rendered the claim indefinite.

2173.04 Breadth Is Not Indefiniteness

Breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.

Undue breadth of the claim may be addressed under different statutory provisions, depending on the reasons for concluding that the claim is too broad. If the claim is too broad because it does not set forth that

which applicants regard as their invention as evidenced by statements outside of the application as filed, a rejection under 35 U.S.C. 112, second paragraph, would be appropriate. If the claim is too broad because it is not supported by the original description or by an enabling disclosure, a rejection under 35 U.S.C. 112, first paragraph, would be appropriate. If the claim is too broad because it reads on the prior art, a rejection under either 35 U.S.C. 102 or 103 would be appropriate.

2173.05 Specific Topics Related to Issues Under 35 U.S.C. 112, Second Paragraph [R-1]

The following sections are devoted to a discussion of specific topics where issues under 35 U.S.C. 112, second paragraph, have been addressed. These sections are not intended to be an exhaustive list of the issues that can arise under 35 U.S.C. 112, second paragraph, but are intended to provide guidance in areas that have been addressed with some frequency in recent examination practice. The court and Board decisions cited are representative. As with all appellate decisions, the results are largely dictated by the facts in each case. The use of the same language in a different context may justify a different result.

>See MPEP § 2181 for guidance in determining whether an applicant has complied with the requirements of 35 U.S.C. 112, second paragraph, when 35 U.S.C. 112, sixth paragraph, is invoked.<

2173.05(a) New Terminology [R-3]

I. THE MEANING OF EVERY TERM SHOULD BE APPARENT

The meaning of every term used in a claim should be apparent from the prior art or from the specification and drawings at the time the application is filed. Applicants need not confine themselves to the terminology used in the prior art, but are required to make clear and precise the terms that are used to define the invention whereby the metes and bounds of the claimed invention can be ascertained. During patent examination, the pending claims must be given the broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Prater*,

Examiner Note:

1. In bracket 2, insert the name(s) of the newly discovered reference.
2. Any action including this form paragraph requires the signature of a Primary Examiner. MPEP § 1004.

706.05 Rejection After Allowance of Application

See MPEP § 1308.01 for a rejection based on a reference after allowance.

706.06 Rejection of Claims Copied From Patent [R-3]

See MPEP *>Chapter 2300<.

706.07 Final Rejection [R-3]

37 CFR 1.113. *Final rejection or action.*

**>

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for ex parte reexaminations filed under § 1.510, patent owner's reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section. For final actions in an inter partes reexamination filed under § 1.913, see § 1.953.<

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

Before final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection. Switching from one subject matter to another in the claims presented by applicant in successive amendments, or from one set of references to

another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance of the application or a final rejection.

While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. But the applicant who dallies in the prosecution of his or her application, resorting to technical or other obvious subterfuges in order to keep the application pending before the primary examiner, can no longer find a refuge in the rules to ward off a final rejection.

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal. However, it is to the interest of the applicants as a class as well as to that of the public that prosecution of an application be confined to as few actions as is consistent with a thorough consideration of its merits.

Neither the statutes nor the Rules of Practice confer any right on an applicant to an extended prosecution; *Ex parte Hoogendam*, 1939 C.D. 3, 499 O.G.3, 40 USPQ 389 (Comm'r Pat. 1939).

STATEMENT OF GROUNDS

In making the final rejection, all outstanding grounds of rejection of record should be carefully reviewed, and any such grounds relied on in the final rejection should be reiterated. They must also be clearly developed to such an extent that applicant may readily judge the advisability of an appeal unless a single previous Office action contains a complete statement supporting the rejection.

However, where a single previous Office action contains a complete statement of a ground of rejection, the final rejection may refer to such a statement and also should include a rebuttal of any arguments

raised in the applicant's reply. If appeal is taken in such a case, the examiner's answer should contain a complete statement of the examiner's position. The final rejection letter should conclude with Form Paragraph 7.39.

¶ 7.39 Action Is Final

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

1. This form paragraph should not be used in reissue litigation cases (SSP- 1 month) or in reexamination proceedings (SSP- 1 or 2 months).
2. 37 CFR 1.136(a) should not be available in a reissue litigation case and is not available in reexamination proceedings.

Form paragraph 7.39.01 may be used to notify applicant of options available after final rejection.

¶ 7.39.01 Final Rejection, Options for Applicant, Pro Se

This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee of \$[1].

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of

this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Examiner Note:

The form paragraph must be preceded by any one of form paragraphs 7.39, 7.40, 7.40.01, 7.41, 7.42.03, or 7.42.09.

The Office Action Summary Form PTOL-326 should be used in all Office actions up to and including final rejections.

For amendments filed after final rejection, see MPEP § 714.12 and § 714.13.

For final rejection practice in reexamination proceedings see MPEP § 2271.

706.07(a) Final Rejection, When Proper on Second Action [R-3]

Due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice.

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b). Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in a reply to a requirement

under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

A second or any subsequent action on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed. See MPEP § 904 *et seq.* For example, one would reasonably expect that a rejection under 35 U.S.C. 112 for the reason of incompleteness would be replied to by an amendment supplying the omitted element.

A second or any subsequent action on the merits in any application or patent involved in reexamination proceedings may not be made final if it contains a new ground of rejection necessitated by the amendments to 35 U.S.C. 102(e) by the Intellectual Property and High Technology Technical Amendments Act of 2002 (Pub. L. 107-273, 116 Stat. 1758 (2002)), unless the new ground of rejection was necessitated by an amendment to the claims or as a result of information submitted in an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

When applying any 35 U.S.C. 102(e)/103 references against the claims of an application ** the examiner should anticipate that a statement averring common ownership at the time the invention was made may disqualify any patent or application applied in a rejection under 35 U.S.C. 103 based on 35 U.S.C. 102(e). If such a statement is filed in reply to the 35 U.S.C. 102(e)/103 rejection and the claims are not amended, the examiner may not make the next Office action final if a new rejection is made. See MPEP § 706.02(1)(3). > If a reference is disqualified under the joint research agreement provision of 35 U.S.C. 103(c) and a new subsequent double patenting rejection based upon the disqualified reference is applied, the next Office action, which contains the new double patenting rejection, may be made final even if applicant did not amend the claims (provided that the examiner introduces no other new ground of rejection that was not necessitated by either amendment or an information disclosure statement filed during the time period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)). The Office action is prop-

erly made final because the new double patenting rejection was necessitated by amendment of the application by applicant.<

See MPEP § 809.02(a) for actions which indicate generic claims as not allowable.

In the consideration of claims in an amended case where no attempt is made to point out the patentable novelty, the examiner should be on guard not to allow such claims. See MPEP § 714.04. The claims may be finally rejected if, in the opinion of the examiner, they are clearly open to rejection on grounds of record.

Form paragraph 7.40 should be used where an action is made final including new grounds of rejection necessitated by applicant's amendment.

¶ 7.40 Action Is Final, Necessitated by Amendment

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

1. This form paragraph should **not** be used in reissue litigation cases (SSP- 1 month) or in reexamination proceedings (SSP- 1 or 2 months).
2. 37 CFR 1.136(a) should not be available in a reissue litigation case and is not available in reexamination proceedings.

**>

¶ 7.40.01 Action Is Final, Necessitated by IDS With Fee

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on [1] prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant

to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

1. This form paragraph should **not** be used and a final rejection is improper where there is another new ground of rejection introduced by the examiner which was not necessitated by amendment to the claims.
2. In bracket 1, insert the filing date of the information disclosure statement containing the identification of the item of information used in the new ground of rejection.

<

¶ 7.40.02 Action Is Final, Necessitated by Invoking the Joint Research Agreement Prior Art Exclusion Under 35 U.S.C. 103(c)

Applicant's submission of the requirements for the joint research agreement prior art exclusion under 35 U.S.C. 103(c) on [1] prompted the new ground(s) of rejection under 37 CFR 1.109(b) presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.02(l)(3). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

1. This form paragraph should not be used and a final rejection is improper where there is another new ground of rejection introduced by the examiner which was not necessitated by amendment to the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).
2. In bracket 1, insert the filing date of the submission of the requirements for the joint research agreement prior art exclusion under 35 U.S.C. 103(c).

<

706.07(b) Final Rejection, When Proper on First Action [R-1]

The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing applica-

tion of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

>A first Office action in a continuing or substitute application may not be made final if it contains a new ground of rejection necessitated by the amendments to 35 U.S.C. 102(e) by the Intellectual Property and High Technology Technical Amendments of 2002 (Pub. L. 107-273, 116 Stat. 1758 (2002)).<

However, it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

Further, it would not be proper to make final a first Office action in a continuation-in-part application where any claim includes subject matter not present in the earlier application.

A request for an interview prior to first action on a continuing or substitute application should ordinarily be granted.

A first action final rejection should be made by using Form Paragraphs 7.41 or 7.41.03, as appropriate.

¶ 7.41 Action Is Final, First Action

This is a [1] of applicant's earlier Application No. [2]. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

1. In bracket 1, insert either --continuation-- or --substitute--, as appropriate.
2. If an amendment was refused entry in the parent case on the grounds that it raised new issues or new matter, this form paragraph cannot be used. See MPEP § 706.07(b).
3. This form paragraph should **not** be used in reissue litigation cases (SSP- 1 month) or in reexamination proceedings (SSP-1 or 2 months).
4. 37 CFR 1.136(a) should not be available in a reissue litigation case and is not available in reexamination proceedings.

¶ 7.41.03 *Action Is Final, First Action Following Submission Under 37 CFR 1.53(d), Continued Prosecution Application (CPA)*

All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

1. This form paragraph is for a first action final rejection in a Continued Prosecution Application filed under 37 CFR 1.53(d).
2. This form paragraph must be prof form paragraphs 2.30 or 2.35, as appropriate.

¶ 7.42.09 *Action Is Final, First Action Following Request for Continued Examination under 37 CFR 1.114*

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened stat-

utory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Note:

This form paragraph is for a first action final rejection following a Request for Continued Examination filed under 37 CFR 1.114.

706.07(c) Final Rejection, Premature

Any question as to prematurity of a final rejection should be raised, if at all, while the application is still pending before the primary examiner. This is purely a question of practice, wholly distinct from the tenability of the rejection. It may therefore not be advanced as a ground for appeal, or made the basis of complaint before the Board of Patent Appeals and Interferences. It is reviewable by petition under 37 CFR 1.181. See MPEP § 1002.02(c).

706.07(d) Final Rejection, Withdrawal of, Premature

If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection. The finality of the Office action must be withdrawn while the application is still pending. The examiner cannot vacate the final rejection once the application is abandoned.

Form paragraph 7.42 should be used when withdrawing the finality of the rejection of the last Office action.

¶ 7.42 *Withdrawal of Finality of Last Office Action*

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

706.07(e) Withdrawal of Final Rejection, General

See MPEP § 714.12 and § 714.13 for amendments after final rejection.

Once a final rejection that is not premature has been entered in an application/reexamination proceeding, it should not be withdrawn at the applicant's or patent owner's request except on a showing under 37 CFR 1.116(b). Further amendment or argument will be

UNITED STATES PATENT OFFICE.

MINNIE LINDHEIM, OF NEW YORK, N. Y.

IMPROVEMENT IN TOBACCO-BAGS.

Specification forming part of Letters Patent No. 213,580, dated March 25, 1879; application filed November 6, 1878.

To all whom it may concern:

Be it known that I, MINNIE LINDHEIM, of the city and State of New York, have invented a new and Improved Package for Tobacco and other articles; and I hereby declare the following to be a full, clear, and exact description thereof, reference being had to the accompanying drawings, making part of this specification, in which—

Figure 1 is a side view of my package with the retaining-string drawn. Fig. 2 is a view of the package distended. Fig. 3 is a view of the package filled and ready for market.

Heretofore it has been customary to pack tobacco and like articles in muslin bags having straight sides and provided with a drawing-string running through a hem around the edge of the open end, the said drawing-string drawing the mouth together after the tobacco has been compressed into the bag, and being tied to retain the tobacco in the package. In most instances purchasers of tobacco put up in this way desire to retain the bag as a pouch from which to use the tobacco from time to time, and are much inconvenienced in this desire from the fact that the moment the drawing-string is loosened to take out a pipeful of the tobacco the elasticity of the compressed tobacco will bulge it up, so the mouth of the bag cannot again be closed to prevent the escape of tobacco into the pocket and consequent wastage.

To overcome this difficulty is the object of my invention; and it consists in a bag of substantially the ordinary formation, provided with a drawing-string to keep the tobacco in place when packed, and above this drawing-string with an extension, flaring or otherwise, provided near its edge with a drawing-string.

In order that those skilled in the art may make and use my invention, I will proceed to

describe the manner in which I have carried it out.

In the said drawings, A is a tobacco package or bag, provided with an extension, B, preferably flaring, which commences immediately at a drawing-string, c, intended to retain the tobacco packed in portion A, which is made of a capacity to contain any desired amount of tobacco. Near the edge of the flaring portion B is another drawing-string, D, for the purpose hereinafter set forth.

While the tobacco is being placed in portion A, to be compressed as usual, the flaring portion serves to direct it in its course. After portion A is filled string c is drawn, as seen in Fig. 1, and subsequently the flaring extension is folded down and the revenue-stamp applied, or otherwise prepared for market in a neat salable package, as seen in Fig. 3.

When the purchaser buys the package of tobacco he simply cuts string c, raises extension B, and has a handy tobacco-pouch to carry in his pocket, the mouth being controlled by string D.

Though I have shown the extension-piece B made with flaring sides, it is evident it can be made with straight sides without departing from the spirit of my invention.

Having thus described my invention, what I claim as new, and desire to secure by Letters Patent, is—

A tobacco-package constructed as described, consisting of the body A, provided with a fastening device, c, and the extension B, provided with fastening device D near its mouth, substantially as set forth.

MINNIE LINDHEIM.

Witnesses:

EDWARD COHN,
A. S. MEYER.

M. LINDHEIM.
Tobacco-Bag.

No. 213,580.

Patented Mar. 25, 1879.

Fig. 1.

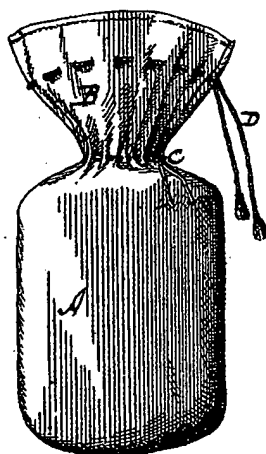


Fig. 3.

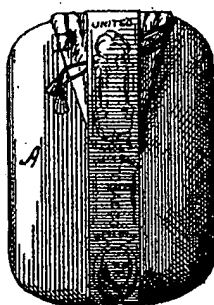
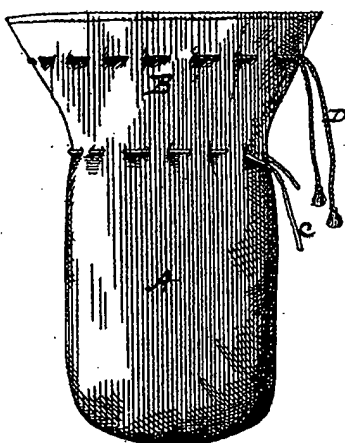


Fig. 2.



Witnesses:

*Clarence Poole
A. H. Gawler.*

Inventor:

*Minnie Lindheim
by her attys
A. H. Evans & Co.*

No. 665,942.

Patented Jan. 15, 1901.

J. N. TABLER.

MAIL POUCH.

(Application filed June 9, 1900.)

(No Model.)

Fig. 1.

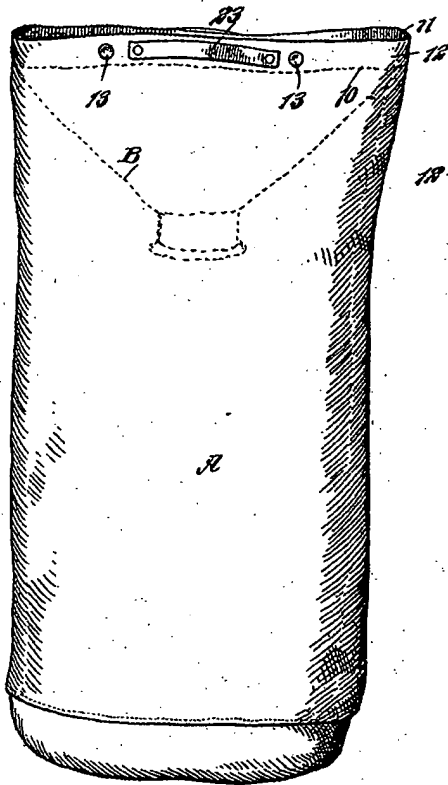


Fig. 2.

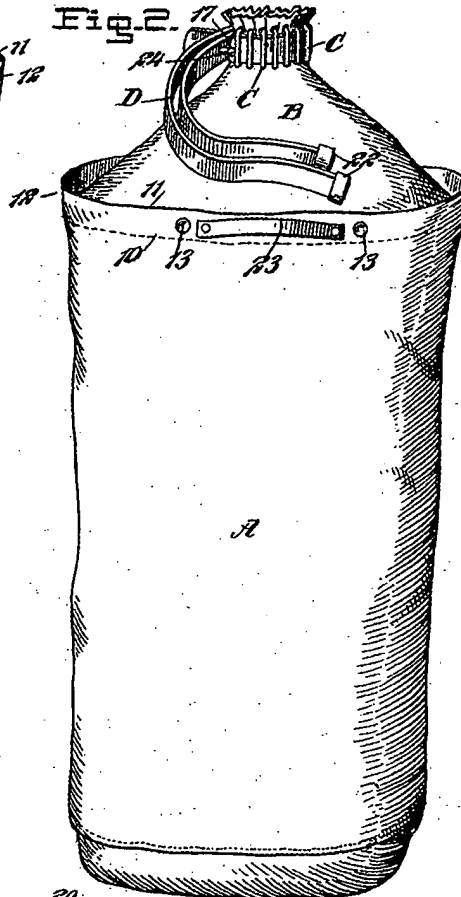


Fig. 3.

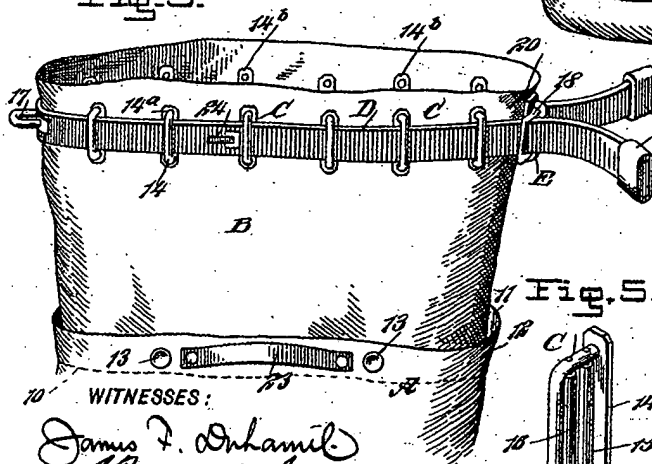


Fig. 4.

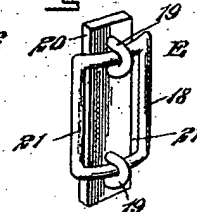
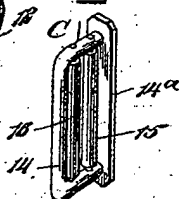


Fig. 5.



WITNESSES:

James F. Orhamil
Attorney

INVENTOR.

Jasper N. Tabler.

BY

Mum
ATTORNEYS

UNITED STATES PATENT OFFICE.

JASPER NEWTON TABLER, OF ROYSE CITY, TEXAS.

MAIL-POUCH.

SPECIFICATION forming part of Letters Patent No. 665,942, dated January 15, 1901.

Application filed June 9, 1900. Serial No. 19,715. (No model.)

To all whom it may concern:

Be it known that I, JASPER NEWTON TABLER, a citizen of the United States, and a resident of Royse City, in the county of Rockwall and State of Texas, have invented a new and Improved Mail-Pouch, of which the following is a full, clear, and exact description.

The purpose of the invention is to provide an extension-top for mail-pouches and a simple, quickly-operated, and secure fastening device for the mouth of said extension-top, and to further so apply the extension-top to the body of the pouch that when the mouth is locked the extension-top and its fastening device will drop within the body of the bag, the top portion of which body may be held closed by auxiliary devices.

The invention consists in the novel construction and combination of the several parts, as will be hereinafter fully set forth, and pointed out in the claims.

Reference is to be had to the accompanying drawings, forming a part of this specification, in which similar characters of reference indicate corresponding parts in all the figures.

Figure 1 is a side elevation of a mail-pouch having the improvement applied, the extension-top having been locked and dropped within the body and the upper portion of the body being closed. Fig. 2 is a perspective view of the mail-pouch, the extension-top being shown as extending from the body and its mouth closed and locked. Fig. 3 is a perspective view of the upper portion of a mail-pouch and the extension-top, the latter being open and illustrating the construction of the fastening device applied to the extension-top; and Figs. 4 and 5 are detail views of guides for the strap which forms a portion of the fastening device for the mouth portion of the extension-top.

A represents the body of a mail-pouch, which is of the conventional shape and may be made of any desired material.

B represents an extension-top for the body of the pouch. This extension-top B is of a lighter material than that of the body, and the extension-top at its lower edge is attached to the inner surface of the body by stitching or otherwise at a line 10 any desired distance from the upper edge 11 of the body, thus forming a flap 12 at the top of the body, which is

free from the extension-top B. This flap 12 is provided on one side, usually, with spring-buttons 13, adapted to enter suitable sockets (not shown) and which are secured to the opposite side of the flap. A series of loop-frames C is arranged in rows at opposite sides of the extension-top B, near the mouth thereof, and these loop-frames are placed parallel with the longitudinal axis of the bag or pouch and may be placed any desired distance apart. Each loop-frame C, as shown in Fig. 5, consists of a bow-body 14, having its ends secured to a plate 14^a, and this plate is attached to the outer face of the extension-top by rivets or otherwise, which rivets are usually passed through reinforcing-plates 14^b, placed upon the inner surface of the extension-top, as illustrated in Fig. 3. Usually two rollers 15 and 16 are mounted to turn in the bow member 14 of each loop-frame C; but one of the rollers (the roller 16) may be omitted and a sleeve substituted, which sleeve when employed turns loosely upon the vertical member of the bow. A strap D is passed between the rollers 15 and 16 of all of the loop-frames C, and the ends of the strap extend beyond the extension-top, as is shown in Fig. 3, and at the side of the extension-top opposite that at which the staple 17 is located a guide E is secured to the extension-top. As shown in Fig. 4, this guide consists of a link 18, secured at the central portion of its top and bottom by staples 19 or their equivalents to the plate 20, and this plate is attached by rivets or other means securely to the extension portion of the bag. The link 18 is preferably curved in direction of the curvature of the bag, as is shown in Figs. 3 and 4. The side portions of the link 18 extend sufficiently beyond the sides of the plate 20 to provide openings 21, through which openings the ends of the strap D are loosely passed, and preferably enlargements 22 are formed at the extremities of the strap.

Handles 23 are usually attached to the body portion of the bag, as shown in Figs. 1, 2, and 3, and slots 24 are made in the strap D, one at each side of the extension-top and at an equal distance from the staple 17. When the extension-top is fully open, as shown in Fig. 3, the mouth of the top constitutes the mouth of the bag. When the bag is to be closed,

the strap D is grasped by one hand at its extremities and the guide E is pressed upon by the other hand. The guide is pressed in one direction, while the strap is drawn in an opposite direction, and in this manner the material at the mouth portion of the extension-top is drawn close together in many folds, the strap passing easily through the loop-frames C. When the mouth of the extension-top has thus been completely closed, the slots 24 in the straps will be opposite each other. These slots are then made to receive the staple 17, and the hasp of a lock is thereupon passed through the staple. After the extension-top has been thus closed by its own weight it will drop down into the body of the bag, as shown in dotted lines in Fig. 1, and then the opposing sides of the flap 12 are brought together and connected by the auxiliary locking device heretofore referred to.

This form of bag protects the locking device, renders the bag easily handled, and the fastening device enables the bag to be quickly locked or unlocked, and the extension-top provides an ample opening for the reception of material.

Having thus described my invention, I claim as new and desire to secure by Letters Patent—

1. A mail pouch or bag provided with an extension-top connected with the inside of the pouch and adapted to be entirely received by the body thereof, loop-frames provided with rollers secured to the extension-top at the mouth, a strap passed between the rollers of the loop-frames, and a staple which secures the strap between its ends to the extension-top, the said strap being provided with opposing slots adapted to register and to receive said staple when the mouth of the extension of the bag is closed, as specified.

2. The combination, with a mail pouch or bag and an extension-top for the same, the extension-top being secured to the inner surface of the body of the pouch near the upper edge of said body, and a strap passed around the extension-top, the said strap being secured at its center to the top and provided

at its secured portion with a staple, of loop-frames secured to the outer surface of the extension-top, the loop-frames having rollers therein, between which rollers the said strap is passed, the strap having slots at opposite sides of the extension-top at equal distances from the staple, and a guide-link provided with a plate centrally dividing it, which plate is secured to the extension-top at a point opposite that at which the staple is located, the ends of the strap being passed through the said link at each side of the dividing-plate, for the purpose set forth.

3. The combination, with a mail pouch or bag and an extension-top for the same, the said extension-top being secured to the inner surface of the body of the pouch near the upper edge of the said body, and a strap passed around the extension-top, the said strap being secured at its center to the top and provided at its secured portion with a staple, of loop-frames secured to the outer surface of the extension-top, the loop-frames having rollers therein, between which rollers the said strap is passed, the strap having slots at opposite sides of the extension-top at equal distances from the staple, and a guide-link provided with a plate centrally dividing it, which plate is secured to the extension-top at a point opposite that at which the staple is located, the ends of the strap being passed through the said link at each side of the dividing-plate, knobs formed at the ends of the said strap, and fastening devices located at the upper portion of the body of the bag or pouch and adapted to close the said upper portion of the body of the bag or pouch when the extension-top has been closed and passed downward into the body of the bag or pouch, as specified.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

JASPER NEWTON TABLER.

Witnesses:

E. L. STEVENSON,
S. B. LASITER.



US 20050072698A1

(19) **United States**

(12) **Patent Application Publication**
Kahl

(10) **Pub. No.: US 2005/0072698 A1**

(43) **Pub. Date: Apr. 7, 2005**

(54) **SHRINK WRAP PROTECTION FOR
PORTABLE WIRELESS DEVICES**

Publication Classification

(76) **Inventor: Leo Kahl, Baltimore, MD (US)**

(51) **Int. Cl.⁷ B65D 65/00; B65D 71/08**

(52) **U.S. Cl. 206/320; 206/497**

Correspondence Address:

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**3000 SOUTH EADS STREET
ARLINGTON, VA 22202 (US)**

(57)

ABSTRACT

A method for protecting a portable wireless device comprises providing a heat-shrinkable, light transmitting plastic bag; inserting the wireless device within the bag; heat shrinking the bag to intimately contact the outer surfaces of the wireless device with the interior surface of the bag.

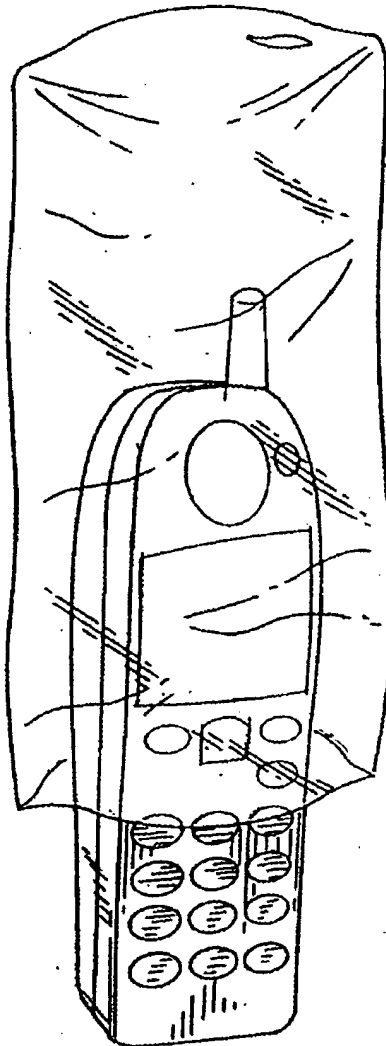
(21) **Appl. No.: 10/652,551**

(22) **Filed: Sep. 2, 2003**

Related U.S. Application Data

(63) **Continuation of application No. 09/656,268, filed on
Sep. 6, 2000, now abandoned.**

A protective bag for portable wireless device comprises a heat-shrinkable, light transmitting plastic bag adapted to receive completely therein in the portable wireless device, wherein the plastic bag is heat-shrunk to intimately contact the outer surfaces of the device with the interior surface of the bag.



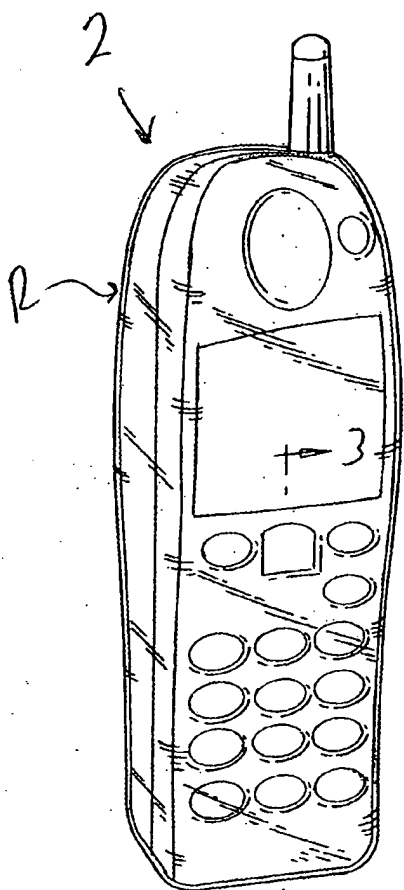


FIG. 1

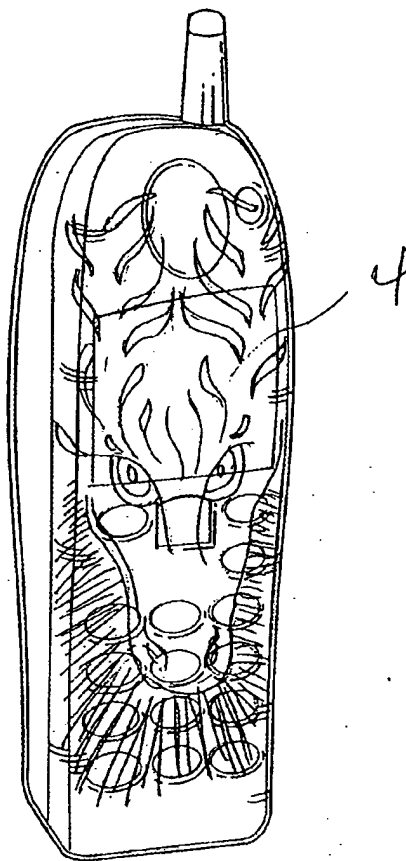


FIG. 2

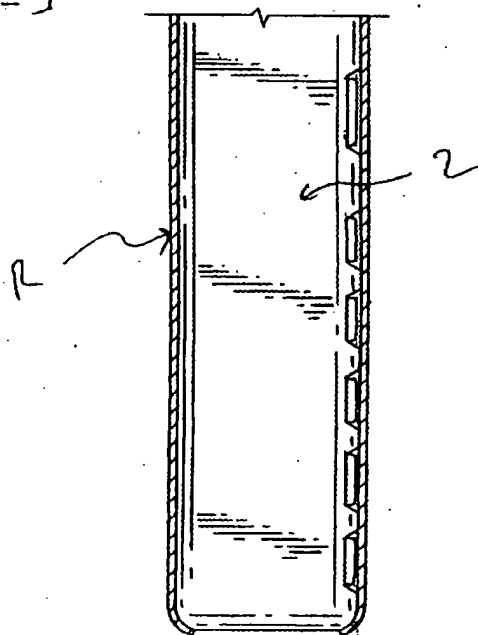
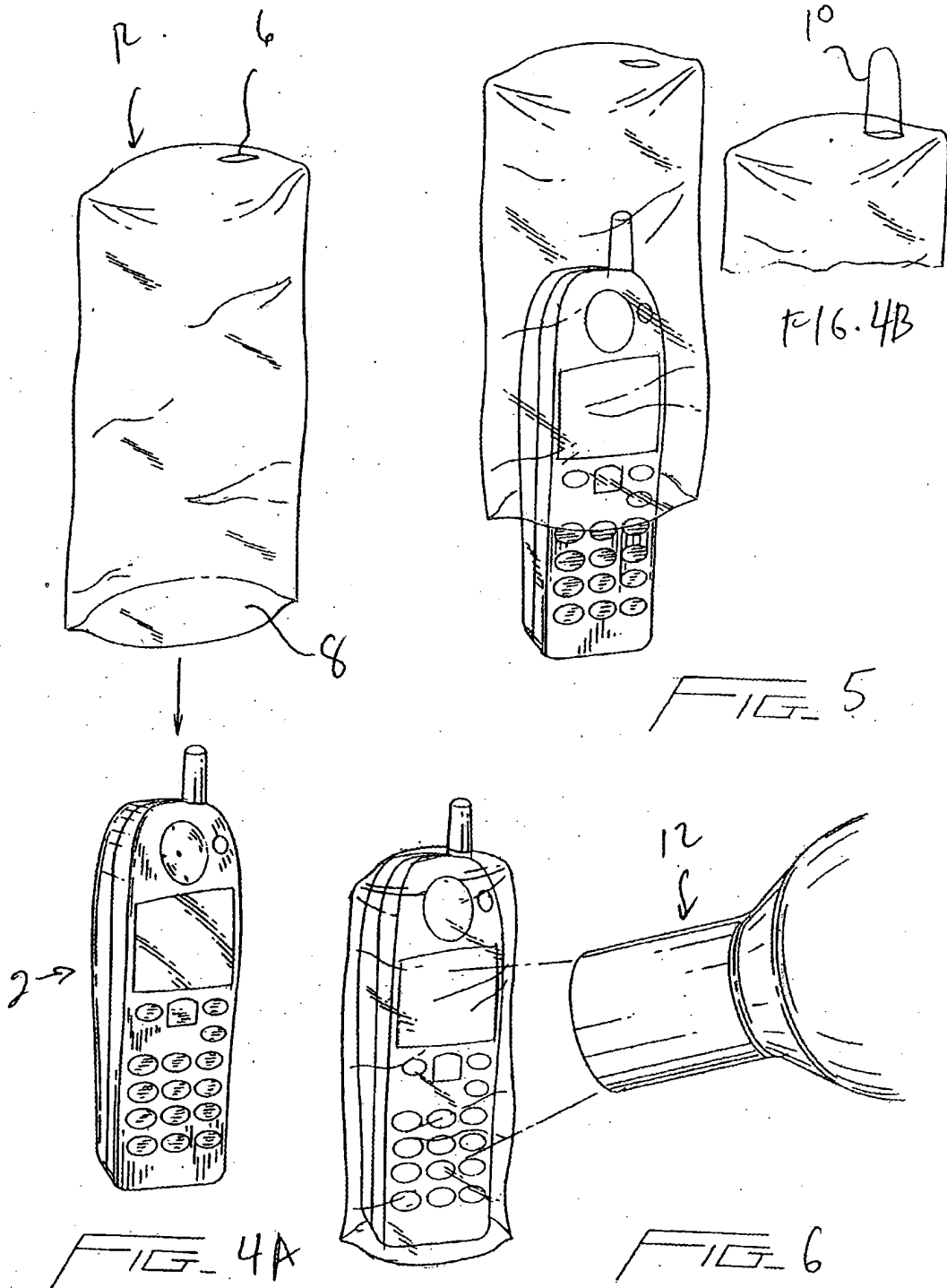


FIG. 3



SHRINK WRAP PROTECTION FOR PORTABLE WIRELESS DEVICES

FIELD OF THE INVENTION

[0001] The present invention is directed to a device and method for protecting and personalizing a portable wireless device.

BACKGROUND OF THE INVENTION

[0002] Portable wireless devices, such as cellular phones, are increasingly popular today for their convenience and the sense of security they give in case of an emergency. It is common today to see someone walking along while using a cellular phone, a driver operating a vehicle with a cellular phone stuck to the driver's ear, or someone on vacation with a cellular phone next to his drink. With their widespread use, it would not be unexpected that these devices would get a lot of abuse, such as getting exposed to rain, getting their screens scratched up inside a purse or pocket, or accidentally getting picked up by mistake while laying out on a counter.

[0003] There is, therefore, a need for a device to make these wireless devices more resistant to the weather, such as light rain, provide scratch protection to their LCD screens and to make them more distinguishable from other similar devices.

OBJECTS AND SUMMARY OF THE INVENTION

[0004] It is an object of the present invention to provide a device and method for protecting portable wireless devices from moisture, such light rain, snow, water spills, etc.

[0005] It is another object of the present invention to provide a device and method for protecting the exterior surfaces of portable wireless devices from being scratched, especially their LCD screens, while they are carried around inside the users' pockets, purses, glove compartments, etc.

[0006] It is still another object of the present invention to provide a device and method for personalizing a portable wireless device so that it is readily distinguishable from other similar devices and thereby lessen its chance of being picked up by mistake by someone thinking it was his own.

[0007] In summary, the present invention provides a method for protecting a portable wireless device comprising providing a heat-shrinkable, light transmitting plastic bag; inserting the wireless device within the bag; and heat shrinking the bag to intimately contact the outer surfaces of the wireless device with the interior surface of the bag.

[0008] The present invention also provides a protective bag for a portable wireless device, comprising a heat-shrinkable, light transmitting plastic bag adapted to receive completely therein in the portable wireless device, wherein the plastic bag is heat-shrunk to intimately contact the outer surfaces of the device with the interior surface of the bag.

[0009] These and other objects of the present invention will become apparent from the following detailed description.

BRIEF DESCRIPTIONS OF THE DRAWINGS

[0010] FIG. 1 is a front perspective view of a cellular phone using the device of the present invention.

[0011] FIG. 2 is a perspective view of a cellular phone using the device of the present invention having indicia thereon.

[0012] FIG. 3 is a cross-sectional view taken along line 3-3 of FIG. 1.

[0013] FIG. 4A is a perspective view of a clear plastic shrink wrap bag about to receive within it a cellular phone.

[0014] FIG. 4B is a fragmentary perspective view of another embodiment of the bag of FIG. 4A, showing an enclosure for the device's antenna.

[0015] FIG. 5 is a perspective view of the bag of FIG. 4A in the process of enclosing the cellular phone.

[0016] FIG. 6 is a perspective view of the bag of FIG. 4A with the cellular phone within it and being shrunk with a heat source.

DETAILED DESCRIPTION OF THE INVENTION

[0017] A portable wireless device, such as a cellular phones 2, using a protective device R made in accordance with the present invention is disclosed in FIG. 1. The device R is made of a clear or light transmitting plastic material, such as PVC or polyolephin, which has been heat-shrunk to conform to the outer shape of the cellular phone 2. The material is light transmitting to allow the user to clearly see the keypad and screen of the phone. The plastic material is moisture resistant, thereby affording the cellular phone protection from exposure to moisture, such as when used in a light rain, snow, etc. The device R provides a replaceable wearing surface to protect the outer surfaces of the phone from scratches, particularly to the LCD screen, to keep the device looking new longer.

[0018] Referring to FIG. 2, the device R may be imprinted with an indicia 4, such as the shape of an animal head, to provide a distinguishing mark to the cellular phone from other similar phones. The indicia 4 may take the form of any design. The indicia is printed with see-through color so that it does not obscure the keypad and function buttons on the face of the phone. The device R may also be made with a see-through iridescent color. With the indicia 4, one's phone can become uniquely personalized.

[0019] Referring to FIG. 3, the device R is shown in intimate contact with the exterior surfaces of the cellular phones 2 so that it stays secured to the phone. The device R does not cover the bottom part of the cellular phone to leave the contact points normally found there exposed for access.

[0020] Referring to FIG. 4, the device R is in the form of a transparent bag sized to fit the cellular phone 2. The size is preferably very close to the actual phone size, just big enough to slip the phone inside the bag. An opening 6 is provided at the top of the bag to allow the antenna of the cellular phone to protrude through the bag. Except for the opening 6, the top of the bag is enclosed. The bottom of the bag has an opening 8 to allow the bag to receive the cellular phone. Alternatively, the opening 6 may be provided with an extension 10 adapted to receive and enclose the antenna when the bag is slipped around the cellular phone.

[0021] After the bag has been positioned around the cellular phone, a heat source, such as a hair blow dryer 12,

is directed at the bag, shrinking the bag to make a tight intimate contact with the outer surfaces of the cellular phone, as best shown in FIG. 6. The bag conforms to the overall outer shape of the phone. The contacts at the bottom of the phone remain accessible by means of the opening 8 at the bottom of the bag.

[0022] With the use of the device R, the cellular phone is provided with a protective covering to provide protection against moisture and from being scratched when carried around. In addition, with the use of an indicia 4, the cellular phone can be personalized, allowing for easy identification of the device from other identical units.

[0023] While this invention has been described as having preferred design, it is understood that it is capable of further modification, uses and/or adaptations following in general the principle of the invention and including such departures from the present disclosure as come within known or customary practice in the art to which the invention pertains, and as may be applied to the essential features set forth, and fall within the scope of the invention or the limits of the appended claims.

I claim:

1. A method for protecting a portable wireless device, comprising:

- a) providing a heat-shrinkable, light transmitting plastic bag;
- b) inserting the wireless device within the bag; and
- c) heat shrinking the bag to intimately contact the outer surfaces of the wireless device with the interior surface of the bag.

2. A method as in claim 1, wherein:

- a) said bag includes indicia made from light-transmitting ink.

3. A method as in claim 1, wherein:

- a) said bag is made with iridescent light transmitting color.

4. A portable wireless device, comprising:

- a) a plastic layer disposed over the outer surfaces of said device, said plastic layer being formed from a heat-shrinkable, light transmitting plastic bag adapted to receive completely therein said device and then heat-shrinking said bag.

5. A method as in claim 4, wherein:

- a) said bag includes indicia made from light-transmitting ink.

6. A method as in claim 4, wherein:

- a) said bag is made with iridescent light transmitting color.

6. A protective bag for a portable wireless device, comprising:

- a) a heat-shrinkable, light transmitting plastic bag, adapted to receive completely therein the portable wireless device, wherein said plastic bag is heat-shrunk to intimately contact the outer surfaces of the device with the interior surface of said bag.

7. A protective bag as in claim 6, wherein:

- a) said bag includes a graphic indicia.

8. A protective bag as in claim 6, wherein:

- a) said bag is made with iridescent color.

* * * * *

United States Patent [19]

Furlow et al.

[11] Patent Number: 4,974,709

[45] Date of Patent: Dec. 4, 1990

[54] COMMUTER CASE

[76] Inventors: Thelma L. Furlow; Lisa M. Furlow,
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[21] Appl. No.: 382,281

[22] Filed: Jul. 20, 1989

[51] Int. CL⁵ A45C 3/00; A45C 3/12;
A45C 13/10; A45C 13/40

[52] U.S. Cl. 190/102; 190/108;
150/111; 383/37; 383/61; 383/74; 383/76;
383/86

[58] Field of Search 383/61, 71, 72, 86,
383/76, 74, 6, 31, 15, 37; 190/102, 168;
150/108, 111; 224/236, 237, 252, 269, 915

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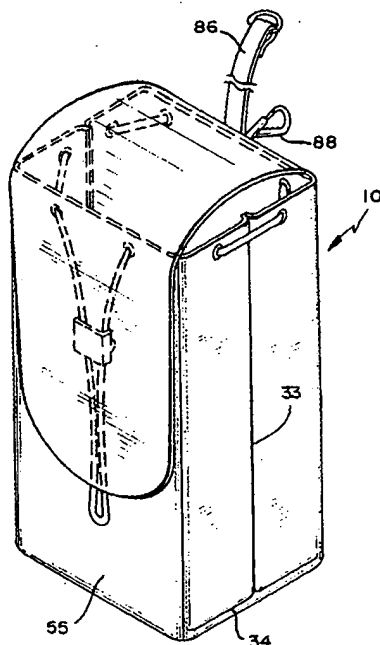
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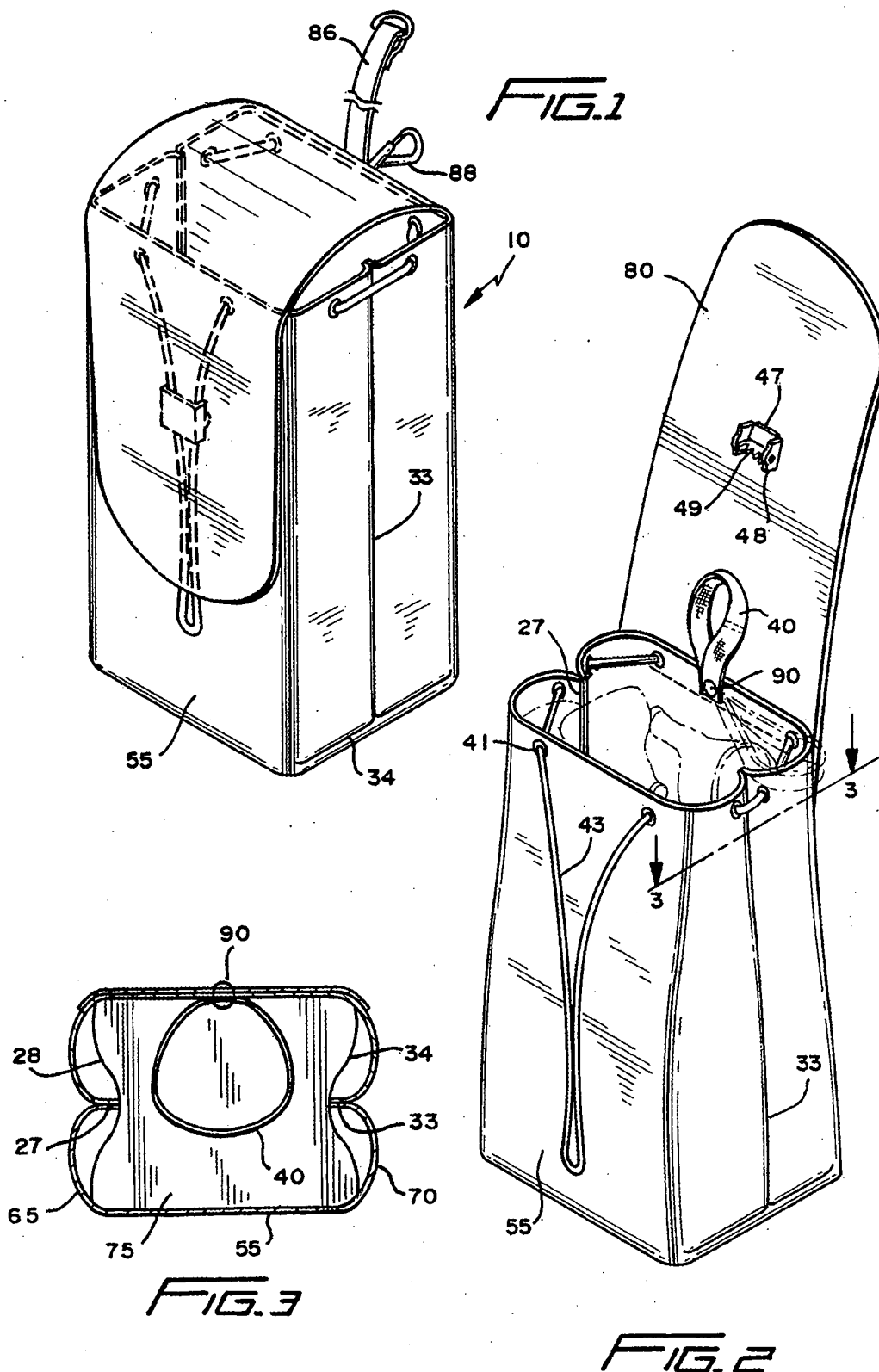
Primary Examiner—Sue A. Weaver

[57] ABSTRACT

A multiple use commuter case or bag which may be attached to a handle or the like of another bag, case, etc. This case accommodates articles that may not suitably fit in a primary carrier such as shoes, foods, supplies, bulky equipment, or personal articles. The case affixes to the primary carrier by a strap allowing both articles to be transported as one. When the case is not needed, it can be detached, collapsed, and rolled up. The strap then fastens around the case so that it remains rolled up.

20 Claims, 3 Drawing Sheets





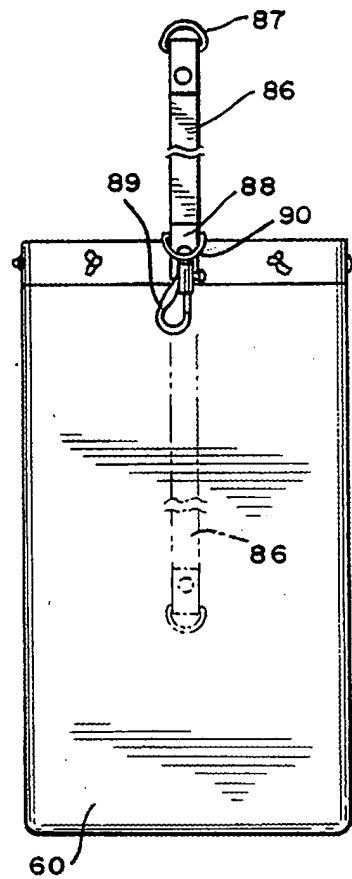
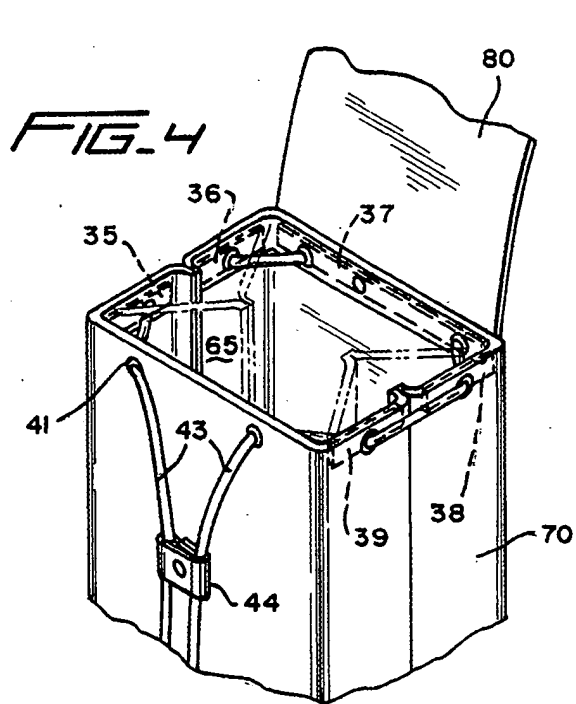


FIG. 5

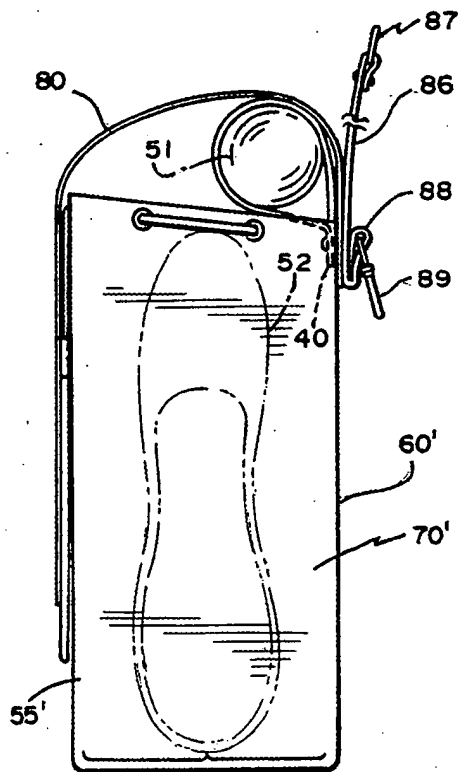


FIG. 8

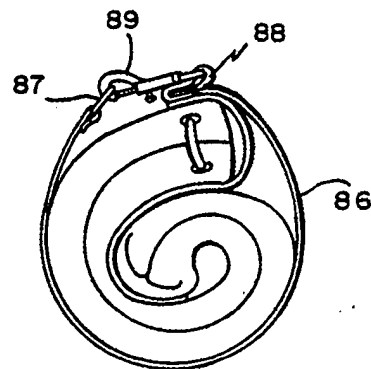
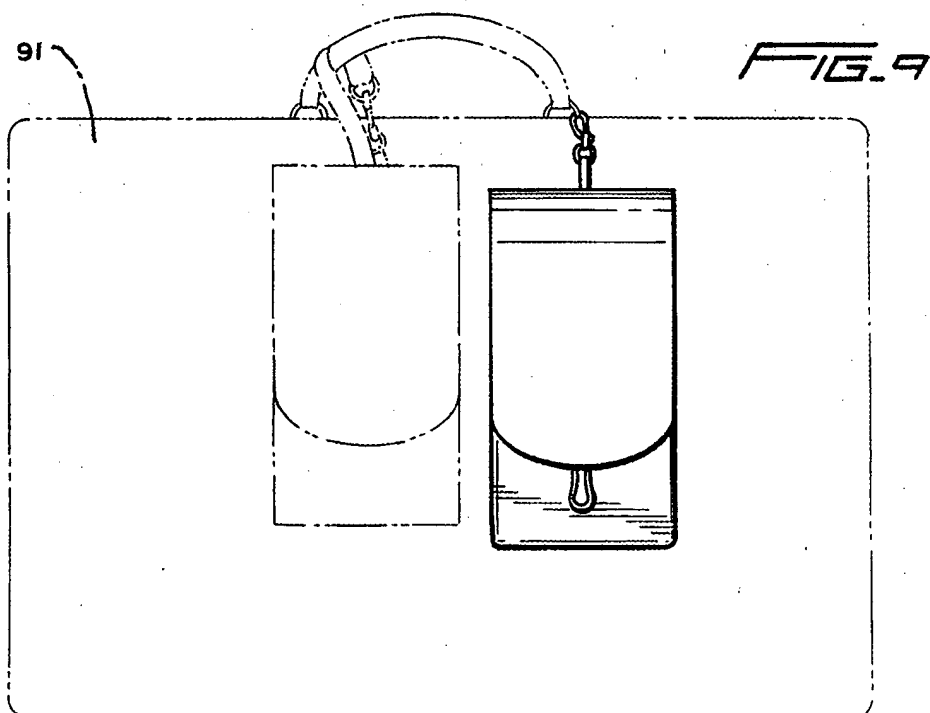
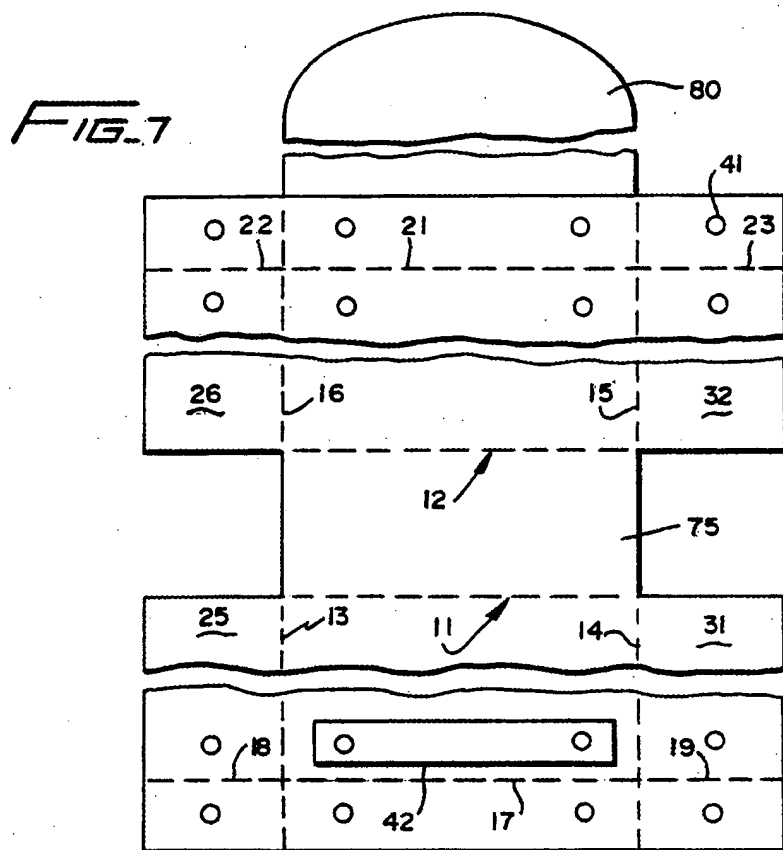


FIG. 6



COMMUTER CASE

BACKGROUND OF THE INVENTION

This invention generally relates to small cases and more particularly to commuter cases for carrying shoes, athletic clothing, bag lunches, newspapers, umbrellas, and assorted personal items.

Women have joined the work force in increasing numbers, and they often commute to work wearing jogging, tennis or walking shoes while carrying their dress or work shoes. A variety of containers such as paper and plastic bags, handbags, and briefcases have been used for carrying their dress or work shoes. However, plastic and paper bags are subject to tearing, and they often do not sufficiently protect, items such as shoes, to prevent them from being scratched, crushed or broken. Handbags and briefcases have been found to be unsatisfactory for carrying shoes, for example, because of space limitations, and shoes often soil the contents of the handbag or the briefcase.

Commuters, both male and female, also often carry a variety of incidental items such as athletic clothing, bag lunches, newspapers, umbrellas, thermos bottles, and the like. An attempt to carry one or more of these items in the user's hands will often result in dropping or losing one or more of these items or worse, injury to the carrier or fellow commuters. Attempts to stuff these items in briefcase or attache cases will often results in wet and dirty contents due to, for example, a leaking thermos, a wet umbrella, a soggy lunch bag, etc. It is also noted that many of these items do not easily fit in many briefcases or attache cases. The present invention overcomes one or more problems commuters have in carrying various items to and from work or social activities by providing a commuter case designed to accommodate a variety of personal items.

Accordingly, one object of the present invention is to provide a flexible carrier which can be attached to another piece of luggage or carried separately by the user for the orderly transportation of shoes, athletic clothing, bag lunches, newspapers, umbrellas, thermos bottles, and other assorted personal items.

Another object of the invention is to provide a flexible carrier for a person's dress or work shoes which reduces the likelihood of scuffing and other damage to the shoes.

Yet another object of the invention is to provide a case for items carried by commuters which is economical to manufacture and which can be rolled up and stored in a compact manner when not in use.

A further object of the invention is the provision of a commuter case which is of relatively compact, efficient design and which can be deployed and used with relative ease.

SUMMARY OF THE INVENTION

A commuter case or bag for carrying assorted personal items includes elongated front, rear and side walls which are joined to a bottom wall, and an elongated flap which, is secured to the upper end portion of the rear wall and which, in closed position, extends across the mouth of the case and overlaps the front wall of the case. A closure means for the case includes a drawstring element that extends through apertures in the front, rear and side walls of the case and an adjustable fastener which is attached to the drawstring for maintaining the bag in closed position. The drawstring cooperates with

a releasable clamp means associated with the flap to adjustably secure the flap at a predetermined position with respect to the front wall of the case. The clamp means includes a lever which pivots from an open position in which the drawstring is freely moveable with respect to the clamp means to a closed position in which the flap is held in a fixed position with respect to the drawstring. The upper portions of the front, rear and side walls of the case can be selectively provided with reinforcing elements for reinforcing the mouth of the case. Elongated, bulky items which do not easily fit within the bag may be carried across the mouth of the bag with the flap overlying the item and secured in a fixed position with respect to the front wall of the case. An internal strap in the case may be utilized to assist in holding the item across the mouth of the case and to secure articles carried within the case. The upper edges of the side walls may slope downwardly from the front wall to the rear wall of the case to bias items carried across the mouth toward the rear wall of the case. Carrying means for the case include long and short strap elements which are pivotally connected to the upper portion of the rear wall of the case. One arrangement for using the strap elements is to connect the end portions of the strap elements together to form a loop or handle for permitting the user to either hand-carry the case or to loop the strap elements around the handle of a bag or briefcase. A second arrangement for use of the strap elements is to pivot the strap elements so that the short strap can be connected directly to the connecting hardware of the handle of bag, briefcase or other type of luggage. When not in use, the strap elements encircle the rolled up case for storage.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a perspective view of the case or bag;

FIG. 2 is a perspective view of the interior of the case in a partially collapsed condition;

FIG. 3 is a view taken along line 3—3 of FIG. 2;

FIG. 4 is a partial perspective view of the interior of the case having reinforced upper wall portions;

FIG. 5 is a rear view of the case;

FIG. 6 is a side view of the case which has been folded and rolled-up for storage;

FIG. 7 is a plan view of material which may be used to form a case;

FIG. 8 is a side view of the case depicting various items in broken lines which are carried by the case; and

FIG. 9 illustrates the manner in which the case may be attached to other luggage.

DETAILED DESCRIPTION OF THE INVENTION

Referring to FIGS. 1 through 9, there is generally shown a commuter case or bag 10 comprising a front wall 55, a rear wall 60, side walls 65 and 70, a bottom 75 and a flap 80, which is secured to the upper portion of the rear wall 60.

Preferably, the walls and the bottom portion of the case are formed of a flexible material such as a pliable leather, nylon, or cloth. The flap portion 80 may be formed of the same material as the walls and the bottom portion, and the flap 80 may be formed of multiple layers of material to provide the flap 80 with a greater stiffness than the other portions of the case. This allows the flap 80 to adequately enclose auxiliary items 51 carried by the case 10 such as shown in FIG. 8 and to

allow the flap 80 to surround the wall and bottom portions when the case 10 assumes a rolled-up configuration.

In a preferred construction, the case 10, without the flap 80, may be formed of a single piece of material, as generally shown in FIG. 7, with the broken lines 11-16 delineating between the different wall portions of the case. In FIG. 7, panel portions 25, 26 are joined together to form side wall 65 and panel portions 31, 32 are joined together to form side wall 70. The case of FIG. 7 is constructed by sewing the case in an inverted, inside-out position wherein the longitudinal portions of panels 25, 26 are joined together to form a seam 27 as shown in FIGS. 2 and 3, and the edge portions of panels 31, 32 are joined together to form another seam 33 shown in FIGS. 1-3. The lower edge portions of panels 25, 26 are joined to the edge of bottom wall 75 to form a bottom seam 28 shown in FIG. 3, and the lower edge portions of panels 31, 32 are joined to the edge of bottom 75 to form another bottom seam 34 as shown FIG. 3. When the seams are sewn and the case is reinverted to assume the general configuration shown in FIG. 1, the seams will be directed inwardly as shown in the cross-sectional view of FIG. 3. This tends to bias the side walls 65, 70 inwardly toward each other and thereby assist in collapsing the case to assume the flat, rolled-up configuration shown in FIG. 6.

The upper edge portions of the rear wall 60, side walls 65, 70 and the front wall 55 define a mouth of the bag which may be provided with reinforcing means for improving the stability of the body such as when the bag is filled with a plurality of articles, and when applicable, for providing support for items 51 carried in a transverse manner between the mouth 20 of the case and the flap 80, as shown in the modified structure of FIG. 8. The reinforcing means may comprise multiple folds of material which form the upper wall portions of the case where material of suitable stiffness is selected, or, as shown in outline in FIG. 4, separate stiffener elements 35, 36, 37, 38 and 39 may be selectively sewn into one or more pockets formed in the upper wall portions of the case by folding the material about broken lines 17, 18, 19, 21, 22, and 23, as shown in FIG. 7. A front stiffener element 42 is shown in FIG. 7. While the stiffener elements for the front and rear walls of the case may comprise single elongated elements, as shown for example by the rear stiffener element 37 in FIG. 4, the stiffener elements of each side wall comprise two stiffener elements 35, 36 and 38, 39 respectively for side walls 65, 70. This allows the side walls to deflect inwardly as the case is collapsed into the flattened and rolled-up configuration shown in FIG. 6. In the partially collapsed position shown in broken lines in FIG. 4, such as would occur if shoes or other articles were inserted in the case 10 and the drawstring 43 were tightened, the stiffener elements for the sidewalls would assume an inwardly directed V-shaped profile. This would tend to provide uniform support for articles carried transversely across the mouth of the case, such as shown for example, by auxiliary item 51 in FIG. 8.

The commuter case is also provided with a closure means for drawing the front and rear walls together, thereby drawing the mouth of the bag toward a closed position. The closure means is preferably in the form of a drawstring 43 which extends through apertures 41 in the walls of the case as shown in FIGS. 2 and 4. The end portions of the drawstring 43 are secured to the upper portion of the rear wall 60 as shown in FIG. 5. In use,

shoes 52 (shown in broken line in FIGS. 2 and 8) or other articles are inserted in the case 10 and the drawstring 43 is pulled/tightened, thereby partially collapsing the mouth of the case. This not only keeps the contents from moving around within the case but also prevents the contents from falling out of the mouth of the case. One means of holding the drawstring in a tightened manner is a cylindrical sleeve element or tightener 44 shown in FIG. 4 which is pushed upwardly towards the upper portion of the case as the drawstring 43 is tightened. The cylindrical sleeve 44 may be provided with rubberized surfaces to prevent the sleeve from sliding along the drawstring. An additional means of holding the drawstring in a tightened manner comprises a latch means preferably in the form of a clamp 47 comprising pivotal latch 48 which is pivoted from a locked position where a toothed portion 49 of the latch 48 engages the drawstring 43, to an unlocked position wherein the toothed portion is pivoted away from the drawstring. The clamp 47 is preferably dimensioned so that the drawstring 43 and tightener 44 are freely slidable through the clamp 47 when the latch 48 is pivoted to an unlocked, open position.

The flap 80 of the case 10 is sewn or otherwise joined to the outer surface of the case 10, generally adjacent to the upper end portion of rear wall 60. As shown in FIG. 8, the flap 80 has a length dimension which is at least about $\frac{1}{2}$ of the length of the front wall 55', so that the flap can enclose additional items 51 carried by the case 10 as shown in FIG. 8 and so that the flap 80 can partially surround the other portions of the case 10 when it is rolled-up. In use, the flap 80 can either overlie the front wall 55' of the case 10 in an unclamped manner or the flap 80 can be held in an overlying secured position with the front wall 55 of the case by inserting the drawstring 43 through clamp 47 and the latch 48 pivoted to engage the drawstring.

The case shown in the side view of FIG. 8 is the same as the case structure depicted in FIGS. 1 through 4, except that the front wall 55' is longer than the rear wall 60' and the side walls 65' (not shown) 70' have an increasing length dimension when proceeding from the rear wall 60' to the front wall 55'. This configuration provides a mouth which slopes downwardly from the front wall 55' to the rear wall 60' so that the upper surface of the side walls slope downwardly from the front of the case to the rear of the case. This sloping surface and the flap comprise a containment means for biasing items such as an umbrella, newspaper 51, and the like toward the rear wall as shown in FIG. 8. Further support for such articles is provided when the drawstring is tightened as shown in FIG. 4. As noted above, as the drawstring is pulled and the mouth of the case begins to close, the sidewalls fold inwardly and, the reinforced upper end portions of the sidewalls 65, 70 assume a somewhat V-shaped configuration, as shown in FIG. 2 and 4 for example, that tends to stabilize and improve the support capacity of the case 10.

When not in use, the case 10 may be rolled-up into the general configuration shown in FIG. 6. This is accomplished, where applicable, by unlatching the clamp 47 and loosening the drawstring 43, if necessary, and flattening the case. Depending on the particular construction of the sidewalls, they will be folded in half and extend either inwardly or outwardly of the case. Beginning with the bottom of the case, the case is then rolled up toward the mouth of the case. The flap 80 can be rolled up with the wall portions of the case as shown in

FIG. 6 or the flap 80 can be wrapped around the outside of the wall portions after they are rolled up. The strap elements for the case, consisting of a long strap element 86 and a shorter strap element 88 are then wrapped around the case and either hooked together as in FIG. 6 or otherwise tied together.

Carrying means for the case 10 comprise a long strap element 86 and a short strap element 88 which are pivotally connected by pivot pin 90 to the upper portion of rear wall 60. The long strap 86 is provided with a ring element 87, and the short strap 88 is provided with a releasable hook means in the form of releasable hook element 89. In use, with the straps 86, 88 pivoted to the upward position shown in FIGS. 5 and 8, the ring 87 and hook 89 can be connected together to form a loop or handle which can be grasped by the user. Alternatively, when it is desired to attach the case to luggage, as shown in broken lines in FIG. 9, the long strap 86 provided with ring 87 is wound around the handle of the luggage 91 and connected to the hook 89 of short strap 88. An alternative use of the strap elements 86, 88 is to pivot the long strap 86 to a downward position, as shown in FIG. 5, and pivot the short strap 88 so that the hook 89 can be attached directly to the hardware which connects a handle to a piece of luggage, as shown in solid lines in FIG. 9. Thus, the short strap 88 and hook 89 are configured to permit the case 10 to be attached directly to other items such as belts, belt loops on pants, zippers, etc... Preferably, the long strap element 86 and short strap element 88 are formed from one piece of flexible material that is divided into two strap elements by placement of the pivot pin along the strap or a fold(s) in the strap. Alternatively, the long strap element 86 and the short strap element 88 are formed from two individual pieces of flexible material wherein the pivot pin is placed along each strap element as shown in FIG. 5.

The inside strap 40, which is removably secured to the inside surface of rear wall 60, can be used for securing items within the case, for securing items which are supported transversely across the mouth of the case, or for holding items such as umbrellas outside of and generally along the outside sidewalls of the case, as shown in broken lines in FIG. 2.

We claim:

1. A flexible bag for carrying personal items, comprising:

- a body portion comprising:
 - front and rear walls;
 - side walls connected to and extending between the front and rear walls, the upper portions of the front, rear and side walls define an opening which comprises the mouth of the bag; and
 - a bottom connected to the front, rear and side walls;
- a flap attached to the upper portion of the rear wall of the bag, for spanning the mouth of the bag and for overlying the front wall of the bag;
- flexible closure means connected to the front and rear walls of the bag for drawing the front and rear walls together; and
- a clamp secured to the flap, the clamp having a fixed portion and a lever portion which pivots from a closed position wherein the lever clamps the flexible closure means between the fixed portion and the lever to an unlocked position wherein the lever pivots away from the fixed portion for permitting withdrawal of the flexible closure means from the clamp.

2. The flexible bag according to claim 1, wherein said flexible closure means comprises a drawstring secured to the rear wall and extending through the side and front walls of the bag, for drawing the walls together to close the mouth of the bag.

3. The flexible bag according to claim 2, wherein the side walls of the bag have inwardly biased seams extending between the upper portion of the side walls adjacent the mouth of the bag and the lower portion of the side walls adjacent the bottom of the bag, so that when the front and rear walls are drawn towards each other to close the mouth of the bag, the side walls of the bag fold inwardly toward each other along the inwardly biased seams.

4. The flexible bag according to claim 3, further comprising:

strap means connected to the exterior surface of the rear wall of the bag for carrying the bag.

5. A flexible bag for carrying personal items, comprising:

a body portion comprising:

front and rear walls;

side walls connected to and extending between the front and rear walls, wherein the upper portions of the front, rear and side walls define an opening which comprises the mouth of the bag; and

a bottom connected to the front, rear and side walls; wherein the upper portion of the rear wall is provided with elongated reinforcing means that extend generally along the mouth of the bag for improving the stability of the body and wherein the side walls of the body have inwardly biased seams extending from an upper portion of the body adjacent the mouth thereof to a lower portion of the body so that as the front and rear walls are drawn towards each other, the side walls of the bag collapse inwardly toward each other;

a flap attached to the upper portion of the rear wall of the bag, for spanning the mouth of the bag and for overlying the front wall of the bag; and

flexible closure means connected to the front and rear walls of the bag for drawing the front and rear walls together, thereby drawing the mouth of the bag toward a closed position.

6. The flexible bag according to claim 5, wherein the upper portion of the front wall of the body is provided with elongated reinforcing means of folds of bag material to form thickened portions extending generally along the mouth of the bag for improving the stability of the body.

7. The flexible bag according to claim 5, wherein upper portions of the side walls of the body adjacent the mouth thereof are provided with elongated reinforcing means for improving the stability of the body.

8. The flexible bag according to claim 7, wherein the flexible closure means comprises a drawstring secured to the elongated reinforcing means of the rear wall and extending through the side and front walls of the bag for drawing the walls together to close the mouth of the bag.

9. The flexible bag according to claim 7, wherein said closure means comprises a drawstring which is connected to the front, rear and side walls of the bag for drawing the wall portions together to close the mouth of the bag, and further comprising:

internal strap means releasably connected to the interior rear wall of the bag for holding elongated

items generally across and spanning the mouth of the bag when the drawstring is drawn to close the mouth of the bag, wherein the elongated reinforcing means of the side walls provide support for carrying the elongated item; and

external strap means connected to the upper intermediate portion of the rear wall of the bag for carrying the bag.

10. The flexible bag according to claim 5, wherein the dimension of the side walls measured from the mouth of the body to the bottom of the body is greater adjacent the front wall than adjacent the rear wall so that the mouth of the body slopes downwardly from the front wall to the rear wall.

11. The flexible bag according to claim 5, wherein upper portions of the front, rear and side walls of the body adjacent to and generally along the mouth thereof are provided with elongated reinforcing bars for improving the stability of the body.

12. A flexible bag for carrying personal items, comprising:

a body portion comprising:

front and rear walls;

side walls connected to and extending between the front and rear walls, the upper portions of the front, rear and side walls define an opening which comprises the mouth of the bag and wherein the side walls of the body are inwardly biased so that as the front and rear walls are drawn together, the side walls fold inwardly toward each other; and

a bottom connected to the front, rear and side walls;

a flap attached to the upper portion of the rear wall of the bag, for spanning the mouth of the bag and for overlying the front wall of the bag;

flexible closure means connected to the walls of the bag for drawing the front and rear walls together, thereby drawing the mouth of the bag toward a closed position; and

strap means pivotally connected to the rear wall of the bag for carrying the bag and for attaching the bag to luggage having a carrying handle apparatus, the strap means including a first strap having a connecting ring means at an end portion and a second strap having a releasable hookshaped connecting means at an end portion, the straps are pivoted together and selectively rotatable between a first position of use wherein the first and second straps extend upwardly from the rear wall and the connecting ring means and the hook-shaped connecting means are connected together so that the first and second straps form a loop for carrying the bag and a second position of use wherein the first strap extends downwardly along the rear wall of the bag and the second strap projects upwardly from the rear wall of the bag for attaching the hook-shaped connecting means to the carrying handle apparatus of the luggage.

13. The flexible bag according to claim 12, wherein the upper portion of the rear wall of the body is provided with elongated reinforcing means that extend generally along the mouth of the bag for improving the stability of the body.

14. The flexible bag according to claim 13, wherein the upper portion of the front wall of the body is provided with elongated reinforcing means that extend

generally along the mouth of the bag for improving the stability of the body.

15. The flexible bag according to claim 14, wherein upper portions of the side walls of the body adjacent the mouth thereof are provided with elongated reinforcing means for improving the stability of the body.

16. The flexible bag according to claim 13, wherein the flexible closure means comprises a drawstring secured to the elongated reinforcing means of the rear wall and extending through the side and front walls of the bag for drawing the walls together to close the mouth of the bag.

17. A flexible bag for carrying personal items, comprising:

a body portion, comprising:

a front wall;

a rear wall;

side walls connected to and extending between the front and rear walls, wherein the upper portions of the front, rear and side walls define an opening which comprises the mouth of the bag, wherein the upper portions of the front, rear and side walls of the body adjacent to and generally along the mouth thereof are provided with reinforcing means for improving the stiffness of the mouth of the bag, wherein the side walls of the bag are inwardly biased so that when the front and rear walls are drawn towards each other to close the mouth of the bag, the side walls of the bag tend to fold inwardly toward each other; and a bottom connected to the front, rear and side walls;

a flap connected to the upper portion of the rear wall of the bag, the flap being designed to span the mouth of the bag and overlie the front wall of the bag;

flexible closure means connected to the front and rear walls of the bag for drawing the front and rear walls together, thereby drawing the mouth of the bag toward a closed position;

strap means connected to the rear wall of the bag for carrying the bag, for maintaining the bag in a rolled up configuration for storage purposes and for attaching the bag to luggage having a carrying handle apparatus, the strap means including a first strap having a connecting ring means at an end portion and a second strap, which is shorter than the first strap, having a hook-shaped connecting means at an end portion, the straps are connected together and positionable between a first position of use wherein the first and second straps extend upwardly from the rear wall and the connecting ring means and the hookshaped connecting means are connected together to form a loop for carrying the bag, and a second position of use wherein the first strap extends downwardly along the rear wall of the bag and the second strap projects upwardly from the rear wall of the bag for attaching the hook-shaped means to the carrying handle apparatus of luggage so that the bag is supported from the luggage, and for wrapping the long strap around the bag when the bag is rolled-up for storage and connecting the connecting ring means to the hook-shaped means of the second strap for maintaining the bag in a rolled-up configuration.

18. The flexible bag according to claim 17, wherein said flexible closure means comprises a drawstring secured to the rear wall and extending through the side

and front walls of the bag, for drawing the walls together to close the mouth of the bag.

19. The flexible bag according to claim 17 wherein the reinforcing means comprise elongated reinforcing bars.

20. The flexible bag according to claim 17 wherein

the reinforcing means comprise an overlapped fold of bag material to form thickened portions extending along the mouth of the bag.

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Dec. 28, 1965

V. S. POLLAK ETAL

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CARRYING BAG CONSTRUCTION

Filed June 7, 1962

2 Sheets-Sheet 1

FIG. 1.

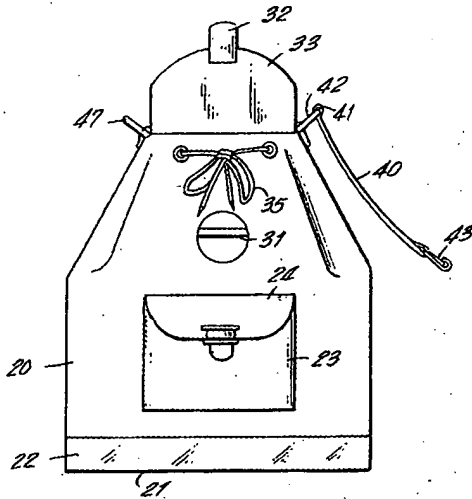


FIG. 2.

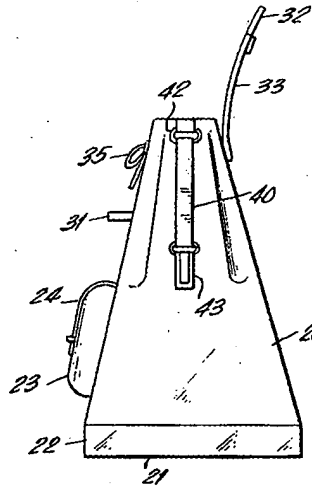


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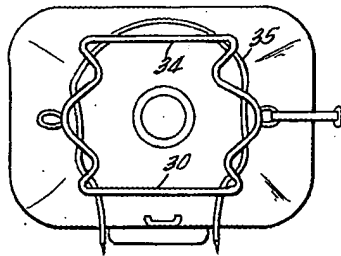


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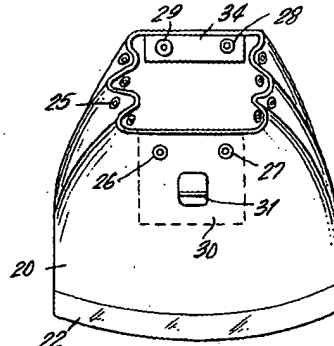


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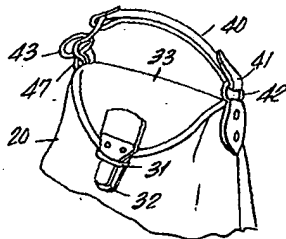


FIG. 6.

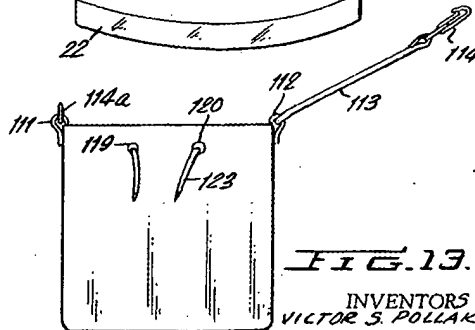
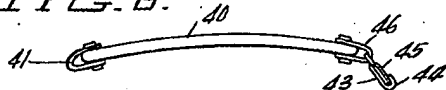


FIG. 13.

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CARRYING BAG CONSTRUCTION

3,225,806

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2 Sheets-Sheet 2

FIG. 6.

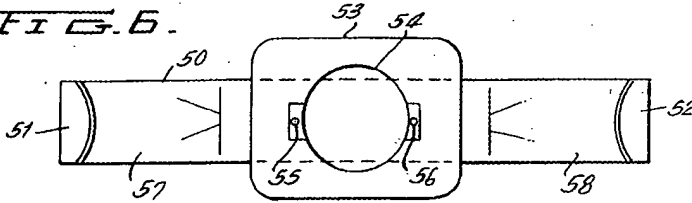


FIG. 9

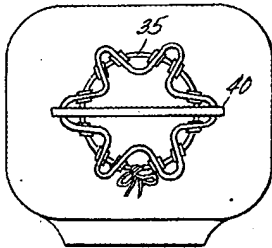


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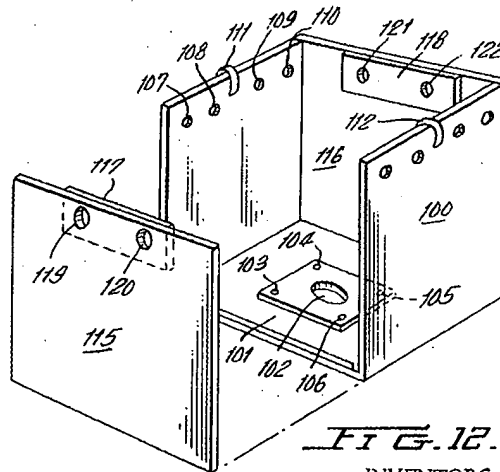
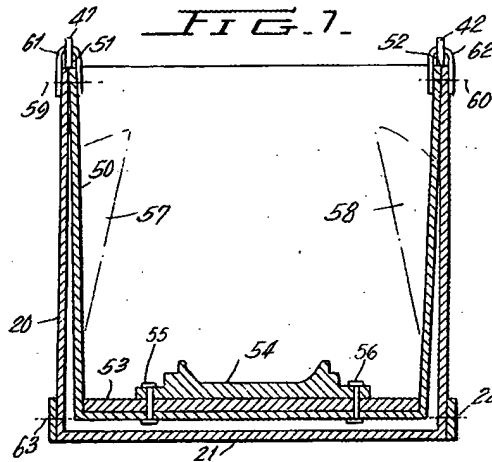
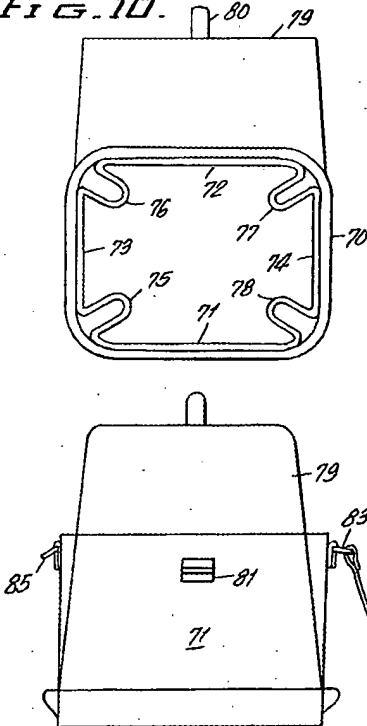


FIG. 12.

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FIG. 11.

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CARRYING BAG CONSTRUCTION

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Filed June 7, 1962, Ser. No. 200,779
3 Claims. (Cl. 150-52)

Our invention relates to a novel construction for carrying bags, and more specifically relates to a novel arrangement for carrying bags adapted particularly for receiving bowling balls.

In manufacturing a bowling ball carrying bag, it would be highly advantageous to have a "tote bag" type construction since this is an attractive design, and would have considerable commercial appeal. Two major problems are encountered when the bag is to be constructed in this form. The first is that the carrying handle would have to have a length which is at least equal to the length of one-half the periphery of the bag so that the ball could be top-loaded when the open end of the bag is completely open. That is, the handle must be long enough so that it will not cover the opening through which the ball is to be inserted. Because of this, a relatively long handle is required so that when the bag is carried it will carry quite low and can, for example, strike stairs when one goes up and down stairs.

A second drawback in tote-type bag construction in which a bottom is to be sewn to the walls of the bag, is that the weight of the ball on the bottom of the bag would require that the bottom of the bag be of sturdy, rigid material which is very securely fastened to the walls of the bag. This requires an expensive construction, but is necessary to prevent the bottom of the bag from bulging outwardly, and from preventing the bottom of the bag from being torn from the tubular walls.

The principle of the present invention is to provide a novel tote bag-type construction for carrying bags wherein the aforementioned two problems are eliminated.

In accordance with the first feature of the invention, the carrying handle is permanently secured to one side of the top of the bag, and can be clipped to the other side of the bag by a snap fastener-type arrangement. Thus, the mouth of the bag can be completely opened with the handle unclipped from its normal position. Thereafter, the top of the bag may be drawn closed and the relatively short handle which could, for example, have a length of the order of one-third of the periphery of the bag is then snapped in position. Since the handle is short, the bag will not be "low slung" when carried.

In accordance with the second feature of the invention, a novel sling arrangement which preferably has its ends secured to the same point that receives the novel carrying handle is carried within the bag interior, and is arranged to receive the relatively heavy weight of a bowling ball. Thus, the ball, while the bag is being carried, will be carried in the sling which is directly secured to the carrying handle, and the bottom of the bag need not serve the function of carrying a heavy weight without buckling.

Accordingly, the bag becomes much more economical in that the bottom of the bag can be of relatively flexible material which is secured to the walls of the bag in a manner sufficient for the non-stress type of use of the bottom of the bag. That is to say, the bottom of the bag serves only to complete the enclosure, and does not have to be constructed in a manner to support a heavy weight.

While the two features noted above are particularly applicable for use with tote bag type bowling ball bags, it will be apparent that their use can be extended either individually or in combination to other carrying bag applications.

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Accordingly, a primary object of this invention is to provide a novel carrying bag for bowling balls.

A further object of this invention is to provide a novel tote-type bowling ball carrier.

Another object of this invention is to provide a novel short handle for carrying bags which is permanently secured only at one end thereof.

Another object of this invention is to provide a novel sling arrangement for the interior of a carrying bag wherein the sling receives the bulk of the weight to be carried within the bag and removes this function from the bag bottom.

Another object of this invention is to provide a novel sling for the interior of carrying bags wherein the sling is adapted to carry heavy weights placed within the bag and its upper ends are secured to the top of the bag at points where carrying handles are attached.

These and other objects of our novel invention will become apparent from the following description when taken in connection with the drawings, in which:

FIGURE 1 is a front view of a tote-type bag constructed in accordance with the present invention.

FIGURE 2 is a side view of the bag of FIGURE 1.

FIGURE 3 shows a view of the bag of FIGURE 1 with the flap in the closed position.

FIGURE 4 is a top view of the bag of FIGURES 1 and 2 with the drawstring in the partially retracted position.

FIGURE 5 is a perspective view of the bag of FIGURES 1 through 4 to illustrate the eyelet arrangement in the top of the bag for receiving the drawstring.

FIGURE 6 is a top view of a sling in its extended position where the sling is to be used with the bag of FIGURES 1 through 5.

FIGURE 7 shows the bag of FIGURES 1 through 5 in conjunction with the sling of FIGURE 6.

FIGURE 8 is a side view of the carrying handle of the bag of FIGURES 1 through 5.

FIGURE 9 shows a top view of a modified bag arrangement wherein opposing stiffening members are not used in the drawstring arrangement.

FIGURE 10 shows a top view of a third embodiment of a bag in which the walls are of relatively rigid material as compared to the walls of flexible material for the bags of FIGURES 1 through 9.

FIGURE 11 is a side view of the bag of FIGURE 10.

FIGURE 12 shows an exploded perspective view of another embodiment of the bag manufactured in accordance with the invention wherein the bottom of the bag is integral with the sling.

FIGURE 13 shows a side view of the bag of FIGURE 12 with the handle in the open position.

Referring first to FIGURES 1 through 5, we have shown therein a form of a tote bag known as a pleated arrangement as contrasted to the flower-type arrangement of FIGURE 9.

The bag in FIGURES 1 through 5 is generally formed of a tubular body portion 20 which is formed of a tube of cloth or leather or similar flexible material, and which is prefabricated into a tubular form. A bottom portion 21 is sewn across the bottom of tube 20 in any desired manner, and an additional strip 22 which can serve a decorative function, and can also, serve to receive appropriate welting arrangements for securing the bottom of the bag 21 to tube 20, may be provided.

The bottom portion 21 can, for example, be formed of the same cloth or leather or other flexible material as the tube 20, and, if desired, can have an additional layer of a fiberboard secured thereto in any desired manner (not shown). Where desired, an additional pocket 23 having a flap 24 can be provided on the outside of tubular body 20.

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The top of the bag is then provided with a plurality of eyelets, best shown in FIGURE 5, such as eyelets 25, 26, 27, 28 and 29. The eyelets 26 and 27 pass through a stiffening member 30 which is sewn to an upper portion of the bag and can, for example, receive a hook 31 which cooperates with the clasp 32 of a covering flap 33. In a similar manner, a second stiffener member 34 extends across the area to include eyelets 28 and 29.

A drawstring 35 then passes through the eyelets in the manner best shown in FIGURE 4 with its two ends extending through eyelets 26 and 27 so that the drawstring can pull the top of the bag closed with the eyelets causing the top of the bag to assume the pleated closed arrangement seen in FIGURES 1 and 2. Thereafter, the flap 33 can be closed, as shown in FIGURE 3.

In accordance with the first feature of the invention, and where the bag is specifically adapted for use with bowling balls, in order to insert the bowling ball into the bag, it is necessary to provide a large mouth opening at the top of the bag as by almost completely straightening out the pleats by pulling apart stiffener members 30 and 34. Where a permanent handle is secured to the bag as would be the expected type of arrangement, it follows that the handle must have a length sufficiently large to permit the ball to be easily dropped into the opening. This, however, would mean that the bag would have to hang very low when being carried, since the handle would have to have a relatively large length.

In accordance with a first feature of the present invention, a carrying handle 40 is provided (FIGURE 8) which, as shown in FIGURES 1 through 4, has a loop 41 (FIGURE 8) which is secured to ring 42, while the other end of handle 40 is provided with a snap-type fastener 43 which is formed of the well-known type of fastener having a hook 44 which receives a spring blade 45. As shown in FIGURE 8, the clip 43 is carried from a loop 46 secured to handle 40.

The clip 43 then can be easily clipped on and removed from hook 47 (FIGURES 1 through 4) whereby the length of the handle need only be sufficient to extend between rings 42 and 47 when the top of the bag is closed. Thus, one can now open the one end of the handle so that a ball can be loaded into the top of the bag without interference from the handle.

Moreover, once the relatively short handle is closed, the bag can be conveniently carried in a high position, since the handle is short. It has been found that the length of the handle is preferably of the order of one-third of the length of the periphery of the open end of the bag.

FIGURE 9 illustrates a modification of the bag of FIGURES 1 through 5 wherein the construction is identical to that of FIGURE 5, except that the stiffener members 30 and 34 of FIGURE 5 are not provided so that the drawstring 35 will close the top of the bag in a flow-type arrangement as contrasted to the pleated arrangement shown in FIGURE 4. Moreover, FIGURE 9 shows that the flap 33 is eliminated, whereby a less expensive bag can be formed retaining, however, the novel concept of the relatively short handle 40.

A second important feature of the invention comprises the use of a novel sling arrangement within the interior of the bag where the sling receives the weight to be inserted in the bag. This novel sling is illustrated in FIGURE 6, and is shown in cross-section in FIGURE 7 as being assembled within the bag of FIGURES 1 through 5, or the bag of FIGURE 9.

Referring now to FIGURE 6, the sling is comprised of a canvas strip 50 having ends 51 and 52. A platform 53 of relatively rigid material and a ball-receiving cup 54 may then be secured to canvas strip 50 as by rivets 55 and 56, or in any other desired manner. Moreover, the two sides of canvas strip 50 may have pockets 57 and 58 sewn thereto which could receive bowling shoes or other accessories.

Referring now to FIGURE 7, we have illustrated the

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sling ends 51 and 52 as being secured to flexible tube 20 at first and second opposing portions of tube 20 as by the sewn lines 59 and 60. The same sewn lines 59 and 60 capture leather loops 61 and 62 respectively which, in turn, receive the rings 47 and 42 respectively which later receive handle 40. The length of canvas strip 50 is made to be slightly less than the length of the bag material adjacent thereto. It is, however, possible to make the sling length equal to the length of the adjacent bag portion, it only being necessary that the weight inserted in the bag such as a bowling ball which is received by cup 54, be carried from the sling through the handle which is received by clips 42 and 47, whereupon the bottom portion 21 of the bag is relieved of stress-carrying duty. Therefore, the bottom portion 21 of the bag can be formed of a flexible material similar to the material which forms the body of tube 20, and can be sewn to tube 20 as by the stitching line 63 without great regard for the strength of the seam. Moreover, and since the platform 53 is of relatively rigid material compared to the bottom portion 21, the bottom of the bag will not sag even though a heavy weight is contained within the bag.

As indicated above, the two main features of the invention, the carrying handle arrangement and sling arrangement which are used in combination, as illustrated in FIGURE 7, are particularly applicable when forming a tote bag arrangement having the external appearance shown, for example, in FIGURES 1 and 2.

It is, however, possible to use these features in other type carrying bags. By way of example, in FIGURES 10 and 11, we have illustrated a carrying bag 70 which has four relatively rigid walls 71, 72, 73 and 74. These walls are connected together by flexible web portions 75, 76, 77 and 78 which permit the bag to be expansible so that a large opening can be made for loading the bag.

A flap 79 having a clasp 80 which receives a ring 81 (FIGURE 11) may then be provided for closing the top of the bag. The problem again arises in this type of arrangement where a permanent handle is used that the permanent handle must have sufficient length to permit the flap 79 to clear the handle. In accordance with the present invention, however, the handle 82 which is secured to ring 83 may be provided with a clip 84 which can be connected to ring 85 after the cover 79 is opened or closed. Thus, when the handle 82 is in its secured position, it is relatively short and the bag can be carried in a high position.

FIGURES 12 and 13 illustrate an embodiment of the invention for an inexpensive bag in which the bottom of the bag is not sewn to the walls of the tubular body of the bag. More specifically, in FIGURES 12 and 13, the bag is inexpensively formed of a first length of fabric or similar flexible material 100 which is in the form of a U, and which receives a rigid platform 101 within the bottom of the U. The platform 101, can, for example, be formed of an appropriate rigid plastic material. The platform 101 then carries a ball cup 102 which is adapted to receive a bowling ball with cup 102, platform 101, and sling 100 being secured together as by four rivets 103, 104, 105 and 106.

It will be noted that sling 100 has appropriate eyelets such as eyelets 107 through 110 therein, with a similar set of eyelets in the other end of the sling for receiving a draw string.

Moreover, leather straps such as straps 111 and 112 are provided for receiving the ends of handle 113 which has a clip fastener 114 at its outer end in the manner described in the preceding embodiments of the invention.

The bag of FIGURES 12 and 13 is completed by the sewing of front and rear panel 115 and 116 respectively to the edges of the sling shaped body portion 100. Appropriate welts can be utilized in making this sewn connection.

If desired, the front and rear panels 115 and 116 may

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have stiffening members 117 and 118 secured thereto as by sewing and will have the eyelets 119-120 and 121-122 respectively, for receiving the drawstring 123.

It will be observed that the bag of FIGURES 12 and 13 lends itself to inexpensive construction with the same desirable sling characteristics as was afforded in the foregoing embodiments. Moreover, the bag will be carried high since the handle 113 may be a short handle in view of the removable connection between clip 114 and the ring 114a secured to the leather strap 111.

Although we have described preferred embodiments of our novel invention, many variations and modifications will now be obvious to those skilled in the art, and we prefer, therefore, to be limited not by the specific disclosure herein but only by the appended claims.

We claim:

1. A carrying bag comprising a flexible tubular body portion; a bottom portion secured to and extending across the bottom of said tubular body portion, closure means secured to the top of said flexible tubular body portion; and carrying handle means; one end of said carrying handle means being connected to a first portion of the top of said flexible tubular body portion; the other end of said carrying handle having fastener means secured thereto; a second portion of said top of said flexible tubular body portion diametrically opposite said first portion having fastener receiving means for cooperating with said fastener; said carrying handle having a length of the order of $\frac{1}{3}$ of the periphery of the top of said flexible tubular body portion; and sling means internal of said bag having first and second ends secured to said first and second portions respectively of said flexible tubular body portion; the length of said sling means being substantially equal to or less than the adjacent length of the said carrying bag body portion and bottom portion; the bottom of said sling means having a weight receiving platform secured thereto; said bottom portion being relieved of carrying the weight carried by said weight receiving platform; the sides of said sling being of flexible material; said sides having pockets therein.

2. A carrying bag comprising a tubular body portion; a bottom portion secured to and extending across the bottom of said tubular body portion, closure means secured to the top of said tubular body portion; and carrying handle means; one end of said carrying handle means

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being connected to a first portion of the top of said tubular body portion; the other end of said carrying handle having fastener means secured thereto; a second portion of said top of said tubular body portion diametrically opposite said first portion having fastener receiving means for cooperating with said fastener; and sling means internal of said bag having first and second ends secured to said first and second portions respectively of said flexible tubular body portion; the length of said sling means being substantially equal to or less than the adjacent length of the said carrying bag body portion and bottom portion; the bottom of said sling means having a weight receiving platform secured thereto; the sides of said sling being of flexible material; said sides having pockets therein.

3. A carrying bag comprising a tubular body portion, a bottom portion secured to and extending across the bottom of said tubular body and a weight securing sling internal of said bag; the ends of said sling being secured at respective and opposing first and second portions at the top of said tubular body portion; said sling permitting a weight inside of said bag to be supported from the said first and second portions of said bag and removing the weight supporting function of said bottom portion of said bag; the length of said sling means being substantially equal to or less than the adjacent length of the said carrying bag body portion and bottom portion; the bottom of said sling means having a weight receiving platform secured thereto; the sides of said sling being of flexible material; said sides having pockets therein.

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45 THERON E. CONDON, *Examiner*.

[54] COOKING UTENSILS

[76] Inventor: Alexander P. Janssen, 28 Old Farm Rd., Bellair Charlottesville, Va. 22903

[21] Appl. No.: 649,680

[22] Filed: Jan. 16, 1976

Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 327,658, Jan. 29, 1973, Pat. No. 3,946,654.

[51] Int. Cl.² A47J 27/10

[52] U.S. Cl. 99/403; 99/407; 99/410

[58] Field of Search 99/403, 407, 279, 410, 99/295, 330, 336, 345, 355, 359, 416-417, 418, 449, 467; 126/39 M, 373; 426/412, 39.2, 397, 403; 220/63, 65

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Primary Examiner—Harvey C. Hornsby

Attorney, Agent, or Firm—Le Blanc, Nolan, Shur & Nies

[57] ABSTRACT

Cooking utensils for both stovetop and oven cookery. They are primarily intended to be used in conjunction with a disposable bag to produce cooked comestibles of superior quality and to eliminate the cleaning appurtenant to the use of conventional cooking vessels.

6 Claims, 11 Drawing Figures

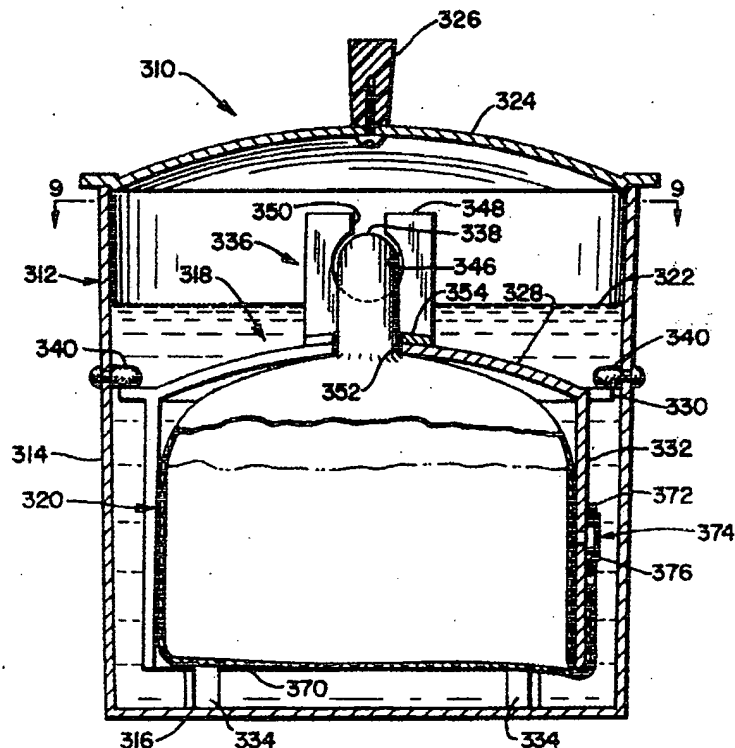


FIG. 1

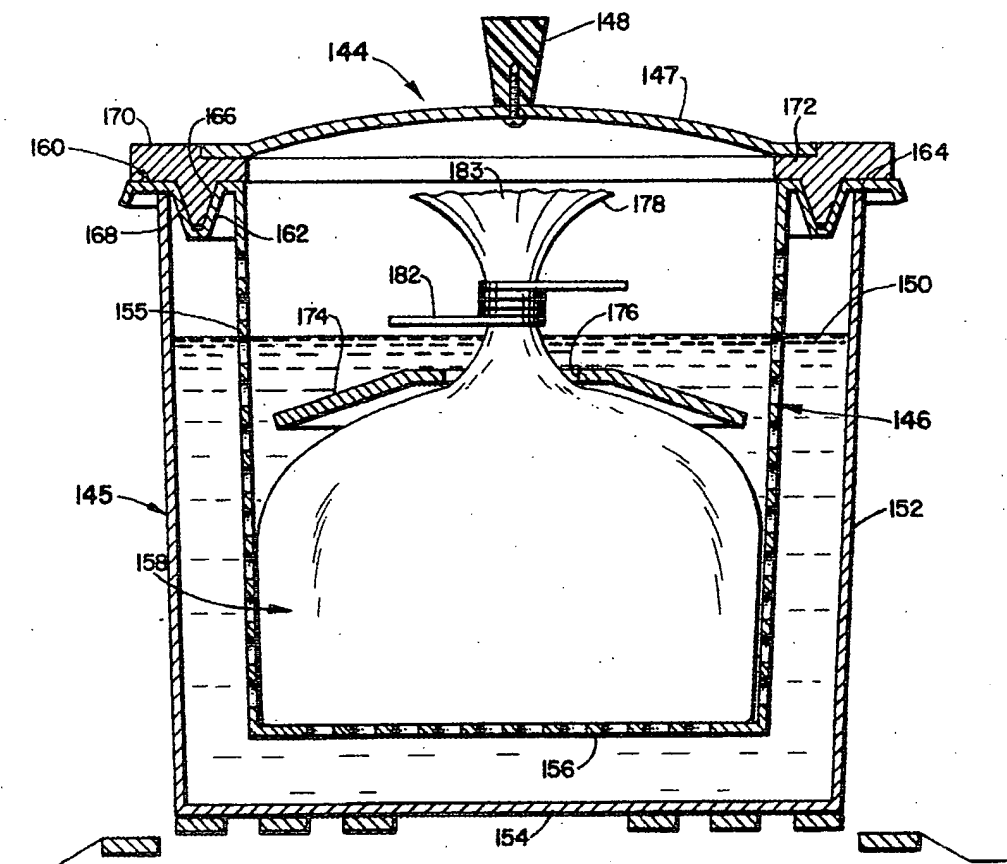


FIG. 2

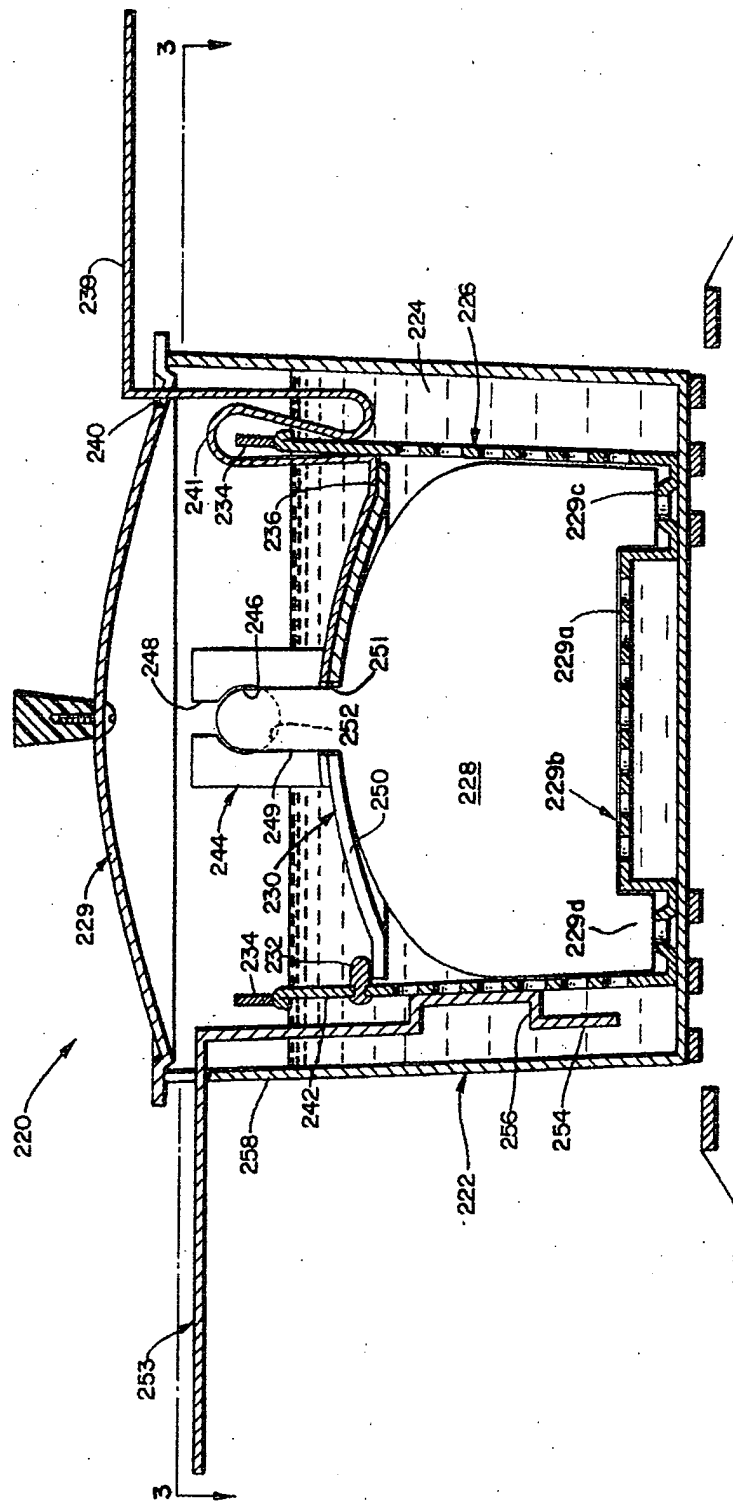
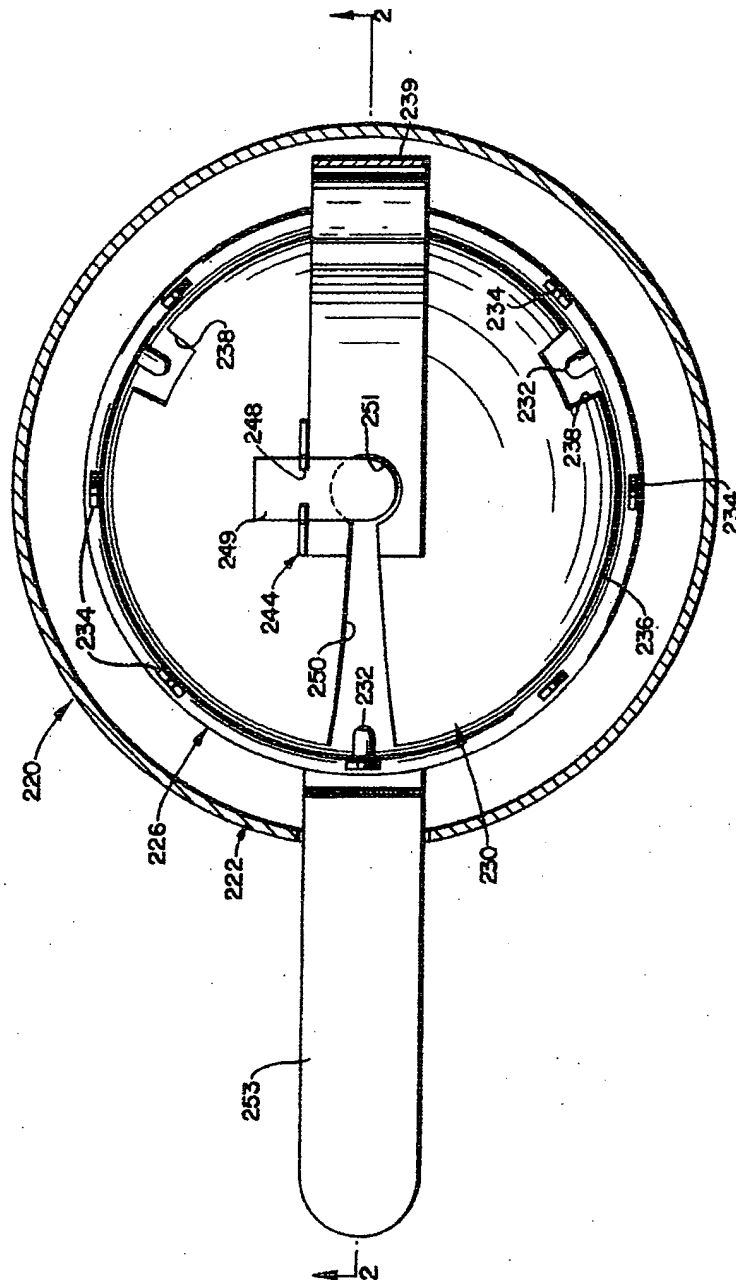
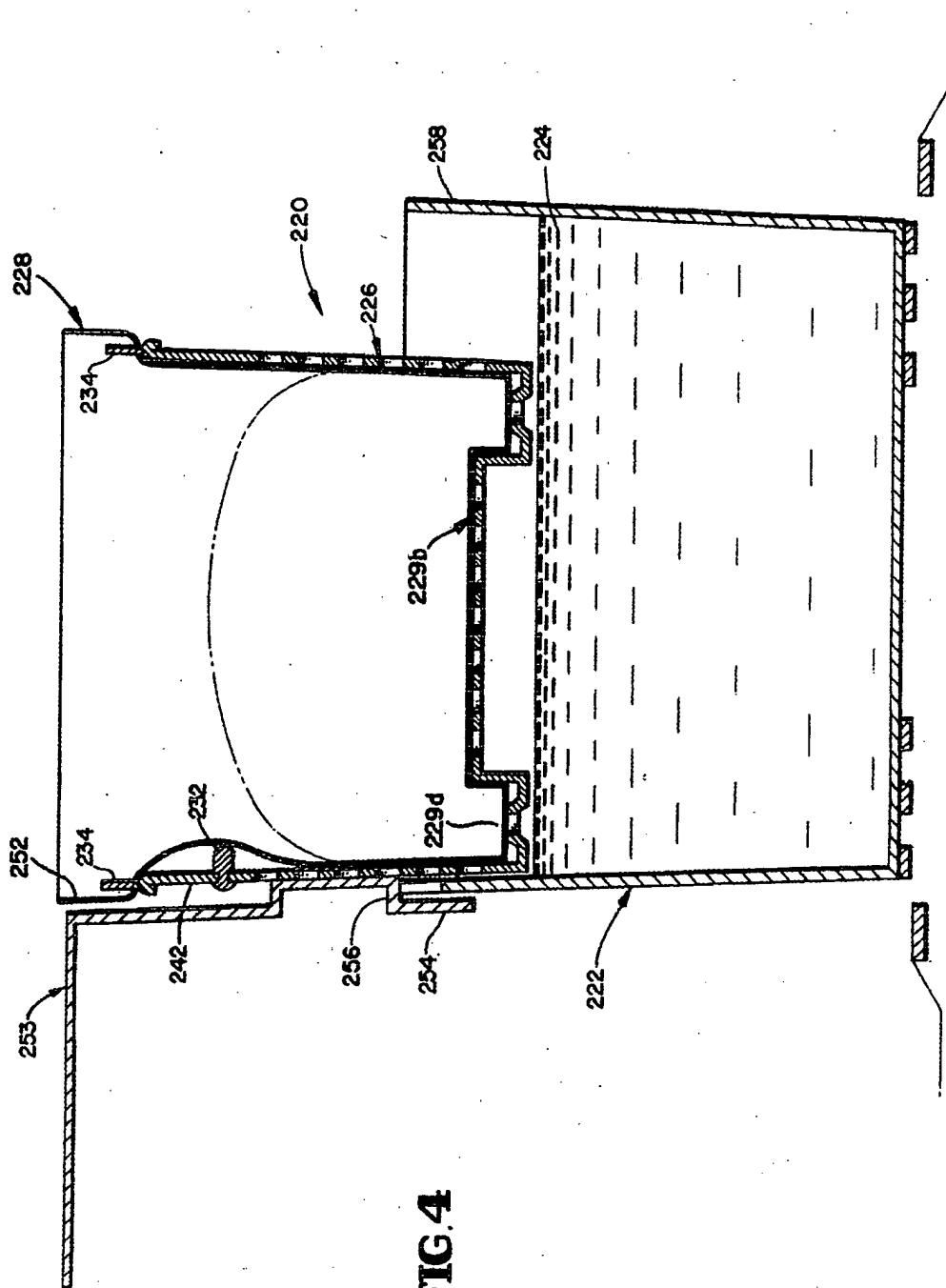


FIG. 3



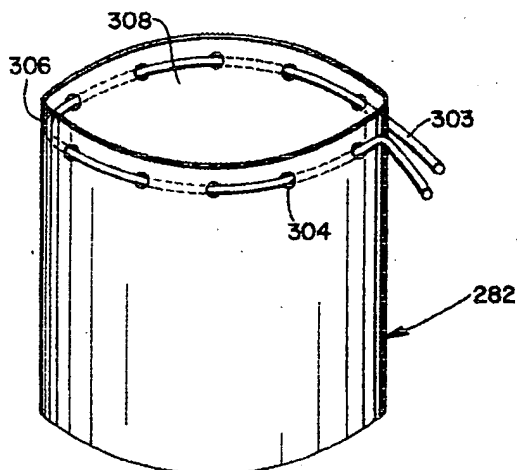


FIG. 7

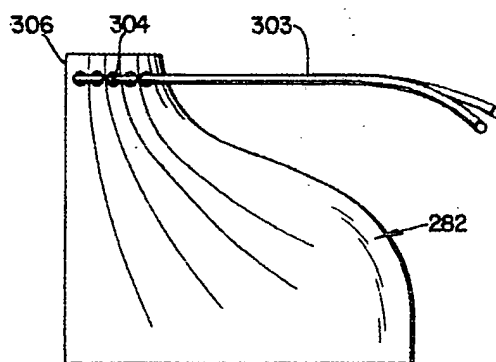


FIG. 6

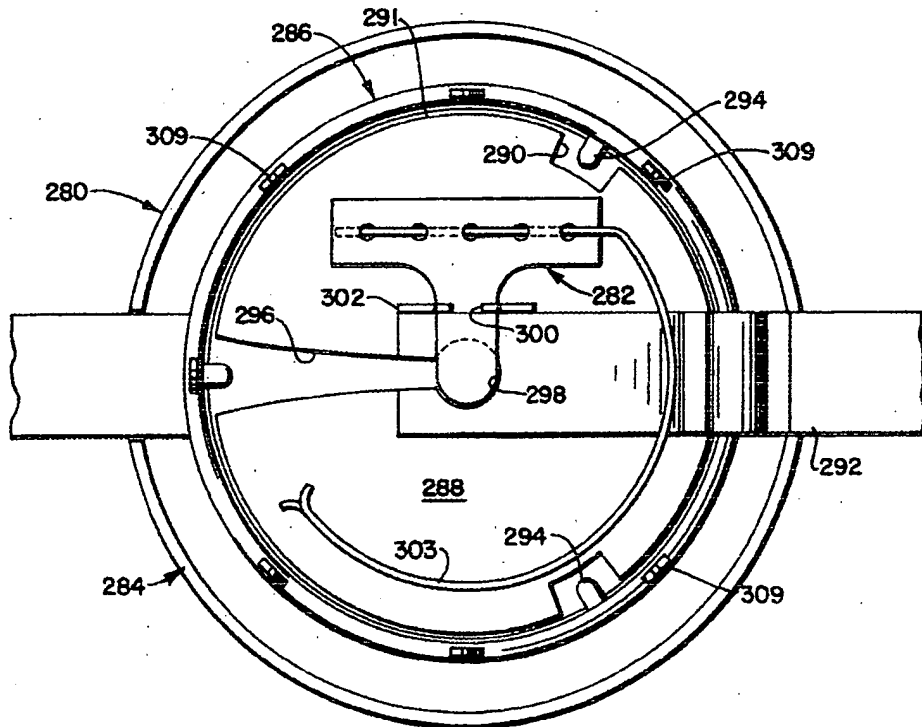


FIG. 5

FIG. 10

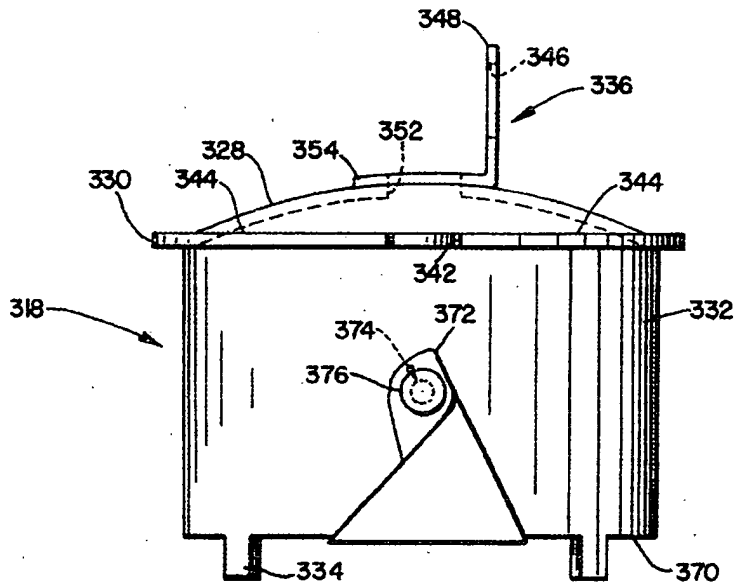
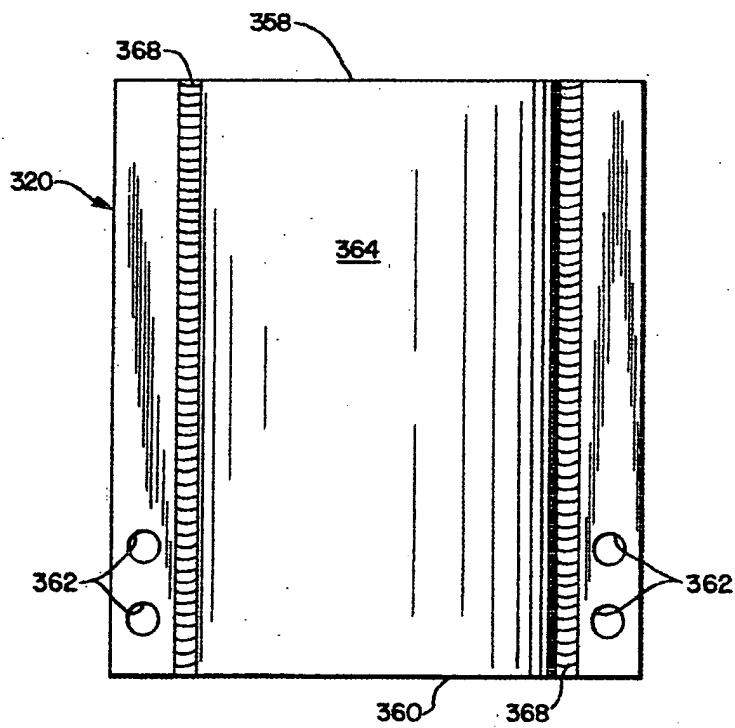


FIG. 11



COOKING UTENSILS

This application is a continuation-in-part of application Ser. No. 327,658 filed Jan. 29, 1973 (now U.S. Pat. No. 3,946,654).

The present invention relates to cooking utensils and, more particularly, to novel, improved cooking utensils for both stovetop and oven cookery.

The novel cooking utensils of the present invention are intended to be used in many, if not most, instances with a disposable bag in which the comestibles are contained during the cooking process.

The term "bag" as employed herein is intended to have a broad meaning and to include sheets of material gathered into a baglike form, etc. as well as those formed containers more conventionally thought of as bags. It is also intended to include bags made available filled with comestibles as well as empty bags which are intended to be filled by the user. Filled bags may be of the sealed type, or their openings may be closed by twist ties or other retainers, for example.

The bag is surrounded by a cooking medium for transferring heat to its contents during the cooking cycle. The cooking medium will typically be water or an oil in the case of stovetop cookery and air for oven cookery.

Cooking in bags of the character just described has a number of important advantages. First, this permits comestibles to be cooked in their own juices. The natural taste of the food is preserved and the loss of nutritional values which occurs when foods are cooked in water is avoided along with the mushy or waterlogged texture which commonly results.

Another virtue is that the utensil is not soiled during the cooking process. Thus, the inconvenience of cleaning the utensil after it is used is eliminated; only rinsing and drying are required.

Furthermore, the bag in which the comestibles are cooked is utilizable to store them. This is a particular convenience if the bag is stored in a refrigerator container or the like as the latter will not become soiled.

To obtain optimum results the cooking vessels I have invented for use with disposable bags are provided with one or more of several novel features not heretofore found in cooking vessels.

One of these is an arrangement for keeping a bag and the comestibles contained in it submerged in the cooking medium when comestibles which would otherwise float are being cooked. This results in heat being conducted uniformly to the comestibles from all directions and, typically, at a higher temperature than it would be if the bag and its contents were allowed to float in the cooking medium. As a consequence, the comestibles are cooked more quickly and more uniformly.

The bag holding arrangement can be constructed so that it will keep the bag and comestibles in place by its own weight. Alternatively, provision may be made for positively or mechanically securing the holddown device in position to achieve this goal.

The bag holding arrangement may also, or instead, be designed to secure the upper, open end of the bag in a manner that will allow gases and vapors evolved from the comestibles to escape while keeping the cooking medium from entering the bag, a configuration sometimes hereinafter referred to as "closed". This permits the bag to collapse against its contents, considerably increasing the efficiency with which heat is transferred

to the comestibles; it also maximizes the uniformity with which heat is transferred to the comestibles from different directions. This type of arrangement can of course also be employed in conventional cooking methods to keep the comestibles submerged in the cooking medium. In this style of cookery, also, evenness and quickness of cooking is promoted by the use of such a device.

Typically, a cooking utensil in accord with the present invention will include an outer container for the cooking medium and an inner container for supporting the bag or liner and its contents; and the device described in the preceding paragraph will be constructed to hold the inner container in an elevated position relative to the outer one. This permits the sides and bottom of the bag and its contents to be almost completely surrounded by the cooking medium, maximizing the contact between the medium and the bag and contents.

An inner container facilitates the removal of the cooked comestibles from one area to another. It also permits the cooked comestibles to be kept warm until served without overcooking them as the cooking utensil operates essentially as a double boiler when the inner container is removed to its elevated position. In addition, the inner container facilitates the removal of cooked comestibles from a bag as the cooking medium cannot press the bag or liner against the comestibles.

The inner container can also be furnished with a well for collecting excess fluids generated in the cooking process. This keeps the fluids from contacting and causing unwanted changes in the flavor, texture, or appearance of the comestibles being cooked. Separation of the fluids also facilitates collection of the fluids at the end of the cooking cycle.

It is not essential that an inner container be employed. The inner container can be omitted altogether or replaced by a rack or other component which will permit the cooking medium to circulate under and around the comestibles being cooked and the bag in which they are contained. In other applications the inner container may advantageously be made imperforate like the inner container of a double boiler.

The arrangement for keeping the comestibles submerged in the cooking liquid can be combined with the inner container into a single unit. In any event the inner container will cooperate with the holddown device to promote quickness of cooking.

Another feature which may be incorporated in various embodiments of the present invention is an arrangement for detachably securing the lower corners of the bag to a component of the utensil with the lower end of the bag stretched across the component. This produces two important advantages.

First, this keeps the bag from being buoyed upwardly in a liquid cooking medium and, also, permits the cooking medium to more effectively collapse the bag against the comestibles. The result is that the bag is more uniformly surrounded by the cooking medium, producing more efficient and uniform cooking of the comestibles.

Second, by securing the lower end of the bag to the component, corners are eliminated and a rounded, more open shape is given to the lower end of the bag. This significantly facilitates the removal of comestibles from the bag.

To take maximum advantage of the feature just discussed, I preferably employ a novel bag construction which facilitates the attaching of the bag to the component. At the same time these bags can be economically

manufactured so that the added convenience can be economically obtained.

It will also be appreciated that the features described above do not in all cases have to be integral components of a cooking utensil or of an associated bag or liner. Instead they can, for the most part, be provided in accessories usable with conventional cooking vessels to give the latter the advantages possessed by the novel cooking utensils disclosed herein.

Disposable bags for cooking and containers with disposable liners are as such not new as shown by U.S. Pat. Nos. 3,027,261 issued Mar. 27, 1962, to Samara; 3,052,371 issued Sept. 4, 1962, to Van Bemmelen; 3,088,255 issued May 7, 1963, to Griem; 3,117,875 issued Jan. 14, 1964, to Burns; 3,227,305 issued Jan. 4, 1966, to Enssle; and 3,590,888 issued July 6, 1971, to Coleman; British Patent Specification No. 965,498 published July 29, 1964; and the Drackett Products Co. pamphlet entitled "How to Use Cooking Magic Bags" copyrighted in 1971. However, a comparison of the foregoing description of applicant's invention with the various devices described in these documents will make it apparent that the latter are structurally unlike applicant's cooking utensils and disposable bags and that they are not capable of producing the results for which applicant's inventions were expressly designed.

From the foregoing, it will be apparent that the primary object of the present invention resides in the provision of novel, improved cooking utensils and disposable cooking bags.

Other important but more specific objects of the invention are the provision of novel cooking utensils usable in conjunction with disposable bags to cook comestibles:

- (1) in a manner which will preserve the nutritional values of the comestibles;
- (2) in a manner which will keep them from acquiring a mushy or waterlogged texture;
- (3) in a manner which will preserve their flavor;
- (4) conveniently and without the soiling of cooking vessels;
- (5) in a manner which makes them convenient to store without soiling a storage container;
- (6) in a manner providing various combinations of the foregoing advantages.

Still other important but more specific objects of the invention reside in the provision of novel cooking utensils:

- (7) in which heat is transferred evenly from all directions to the comestibles being cooked;
- (8) in which comestibles cook quickly;
- (9) which, in conjunction with the two preceding objects, are designed to be used with a disposable, comestibles-containing bag and are constructed to keep the cooking medium from entering the bag during cooking while permitting gases and vapors to escape so that the bag can collapse against its contents to insure a uniform and efficient transfer of heat to the contents;
- (10) which are intended to be used in conjunction with a disposable, comestibles-containing bag and which make provision for ready access to the interior of the bag;
- (11) which include a container for the cooking medium, a comestibles-supporting component disposable in the container, and an arrangement for holding the supporting component in an elevated position relative to the container to facilitate access to the supporting component;

(12) which include an arrangement for opening and/or holding open the upper end of a comestibles-containing bag;

(13) in which provision is made for circulating a cooking medium into contact with at least most of the periphery of a disposable bag in which the comestibles to be cooked are contained;

(14) which furnish ready access to the comestibles being cooked;

(15) which have various combinations of the novel features and advantages identified above.

Still another object of the invention resides in the incorporation of certain of the mechanical features identified above into accessories which can be used in conjunction with conventional cooking vessels to obtain various ones of the advantages previously described.

Other important objects and advantages and further novel features of the present invention will become apparent from the appended claims and as the ensuing detailed description and discussion proceeds in conjunction with the accompanying drawing, in which:

FIG. 1 is a vertical section through a cooking utensil constructed in accord with the principles of the present invention which also shows an arrangement for keeping the mouth of a bag closed while comestibles contained in it are being cooked;

FIG. 2 is a vertical section through a second form of cooking utensil in accord with the principles of the present invention which has an arrangement for keeping a comestibles-containing bag submerged in a cooking medium and a separate arrangement for supporting an inner container of the utensil in an elevated position to facilitate access to the interior of the bag; the section is taken substantially along lines 2-2 of FIG. 3;

FIG. 3 is a horizontal section through the cooking utensil of FIG. 2, taken substantially along lines 3-3 of the latter figure;

FIG. 4 is a view similar to FIG. 2, but with the inner container in its elevated position and the cooking bag open;

FIG. 5 is a plan view of a sixth form of cooking utensil in accord with the principles of the present invention;

FIG. 6 is an elevation of a disposable cooking bag designed for use with cooking utensils of the type disclosed herein, the mouth of the bag being closed;

FIG. 7 is a view of the bag with its mouth open;

FIG. 8 is a vertical section through yet another cooking utensil in accord with the principles of the present invention;

FIG. 9 is a horizontal section through the utensil taken substantially along line 9-9 of FIG. 8;

FIG. 10 is an elevation of a holddown device incorporated in the utensil of FIGS. 8 and 9; and

FIG. 11 is an elevation of a disposable bag especially intended for use with a cooking utensil of the character shown in FIGS. 8-10.

Referring now to the drawing, FIG. 1 depicts a cooking vessel 144 constructed in accord with the present invention. This cooking utensil is useful for both oven and stovetop cookery.

Cooking utensil 144 includes an outer container or pan 145, an inner, bag-holding rack or support 146, and a lid 147 with a handle 148.

The outer component 145 of the cooking utensil, which is designed to hold a cooking medium 150, has a vertically extending side wall 152 and a bottom wall 154 like those of conventional pans. It will also typically

have one or more handles (not shown) to facilitate handling.

Bag-holding support 146 has a vertically extending, perforate side wall 155 and a perforate bottom wall 156. This permits the cooking medium to circulate freely around and into contact with a disposable bag 158 supported in the rack.

A generally horizontal, outwardly extending flange 160 is formed at the upper end of rack side wall 155. Intermediate its inner and outer edges, a downwardly extending, generally V-shaped projection 162 is formed in flange 160.

Flange 160 rests on the upper edge 164 of outer container side wall 152. This keeps the bottom wall 156 of the rack in spaced relation to the bottom wall 154 of the outer container. Projection 162 keeps the side wall 155 of the rack in spaced relation to outer container side wall 152.

Projection 162 also provides an upwardly opening recess 166 in which a correspondingly configured, depending projection 168 on a ringlike retainer 170 is seated. A recess 172 in the retainer furnishes a seat for lid 147 of the cooking utensil.

Cooking utensil 144 will also typically include a component 174 for keeping the comestibles-filled bag 158 submerged in the cooking medium. This component has a concavo-convex configuration and will typically be made of metal so that it will be heavy enough to keep bag 158 and its contents from floating.

An aperture 176 in component 174 allows the upper, open end 178 of the bag to extend upwardly through the holddown component.

In the cooking arrangement shown in FIG. 1, a tie 182 is employed to narrow the opening 183 in the bag during the cooking cycle. Such ties are conventional and typically consist of a readily deformable, wirelike core surrounded by a cellulosic or other covering. The bag may be one previously filled and provided with a twist tie to secure the contents in place; or the bag may be filled and the twist tie added later—at the time the comestibles are to be cooked or at an earlier time.

Provision is also made in cooking utensil 144 for holding the upper end 178 of bag 158 open, when desired. This is accomplished by removing lid 147, retaining ring 170, and tie 182. The upper end 178 of the bag is then spread and folded across the flange 160 at the upper end of rack side wall 155. The retaining ring 170 is then replaced, clamping the upper end of the bag in recess 166 to keep it in place.

It will also be apparent that utensil 144 can be used without modification to cook comestibles made available in sealed bags and pouches as are a number of frozen foods. Holddown device 174 will in this case, also, keep the bag and contents submerged by its own weight, allowing the comestibles to cook faster and/or more uniformly in many cases.

Returning again to the drawing, FIGS. 2, 3, and 4 are devoted to a cooking utensil 220. This utensil includes an outer container or pan 222 for a cooking medium 224, an inner rack or bag holding device 226 in which a comestibles-containing bag 228 can be disposed, and a lid or cover 229.

For the most part rack 226 is like the rack 146 of the utensil shown in FIG. 1.

The major, central portion 229a of rack bottom wall 229b, however, is elevated with respect to its peripheral portion 229c. The peripheral portion of disposable bag 228 depends into the recess formed by the just-

described configuration of bottom wall 229b to form a well 229d. Liquids evolved during the cooking cycle collect in the well. This keeps excess liquids out of contact with the comestibles during the cooking cycle and facilitates the removal of the comestibles apart from the liquids at the end of the cooking process.

The mechanism employed to keep bag 228 and its contents from floating during the cooking cycle and to close and open the bag includes a coverlike holddown device 230, cooperating stops 232, and tabs or prongs 234.

Referring now in particular to FIGS. 2 and 3, the holddown device is a concavo-convex member with a generally horizontal flange 236 in which notches 238 are formed. The holddown device also includes a handle 239 which extends to the exterior of the cooking utensil through a notch 240 in lid 229. A spring clip 241 in the handle detachably fixes the holddown device to rack 226 so that it will not be floated upwardly by comestibles being cooked.

Stops 232 are fixed in any convenient manner to the side wall 242 of rack 226 and extend inwardly therefrom. As shown in FIG. 3, holddown device 230 can be manipulated by handle 239 to align notches 238 with stops 232. The holddown device is then lowered and rotated until unnotched portions of flange 236 lie beneath the stops as shown in FIG. 2. This locks the holddown device in the illustrated position, making it capable of keeping bag 228 and its contents submerged as shown in the same figure.

Fixed to and extending upwardly from holddown device 230 is a bracket 244. Formed in the bracket is an aperture 246 communicating with the upper edge of the bracket via a slot 248.

The upper portion 249 of bag 228 is gathered to narrow its opening by drawing it through a slot 250 in holddown device 230 into aperture 251 therein and then displacing this portion of the bag through the slot 248 in bracket 244 into aperture 246.

The bag is held open to facilitate access to its interior by withdrawing its upper end 249 from bracket 244, removing cover 229 and holddown member 230, and impaling the upper portion 249 of the bag on prongs 234 to spread opening 252. The prongs will typically have a triangular configuration.

FIG. 5 shows bag 228 with its upper end 249 thus immobilized to facilitate access to its interior through opening 252.

The bag-supporting component 226 of cooking utensil 220 is also preferably provided with a handle 253. FIG. 4 shows the cooking utensil with a guide 254 and ledge 256 formed in handle 253 engaged with the upper edge of outer container side wall 256. Thus, the outer container supports the bag-holding rack 226 in an elevated position relative to the outer container above the cooking medium 224 in the latter. This facilitates the loading of a bag or bag and contents in the supporting component and the removal of the same therefrom.

Referring again to the drawing, FIG. 5 depicts a cooking utensil 260 similar to the utensil 220 just described, but designed to be employed in conjunction with a different type of disposable bag 262. The bag is shown in profile in FIG. 6 and pictorially in FIG. 7.

Cooking utensil 260 includes an outer container or pan 264, an inner component or rack 266, and a holddown device 268. Components 264 and 266 may be of generally the same construction as the corresponding components in those embodiments of the invention

described previously as may holddown device 288. Notches 290 are formed in the manner described previously in a flange 291 extending from the holddown device. These permit the latter to be rotated by its handle 292 to align the notches with stops 294 fixed to and extending inwardly from rack 286. The holddown device is then lowered and rotated to lock it in place in pan 284. As in the other embodiments of the invention with holddown devices, this keeps bag 282 and its contents submersed in the cooking medium contained in pan 284.

An elongated slot 296 terminating in a circular aperture 298 is formed in the holddown device. A second slot 300 is formed in an upstanding bracket 302 attached to and forming a part of the holddown device.

Referring now to FIGS. 6 and 7, a drawstring member 303, typically formed of wire or a similar, relatively stiff material, is threaded through apertures 304 in the upper portion 306 of the bag, which terminates in an opening 308. The upper end 306 of the bag can be collapsed by member 303 to constrict opening 308 as shown in FIG. 6 or spread apart on this member to enlarge the size of the opening as shown in FIG. 7.

As shown in FIG. 5, the upper end 306 of bag 282 is kept uppermost during the cooking cycle by sliding this portion of the bag through slot 296 into aperture 298 and then folding it laterally and pushing it down through slot 300. When access to the interior of the bag is wanted, the sequence is reversed.

Referring still to FIG. 5, the inner component 286 of the cooking utensil may also be provided with prongs 309 such as those employed in the cooking utensil 220 of FIG. 2, if desired. These increase the versatility of cooking utensil 280 by permitting it to be used with conventional bags in addition to those of the character illustrated in FIGS. 6 and 7.

Bags with drawstrings for closing their open ends can of course be used with other cooking utensils employing the principles of the present invention. For example, a drawstring can be substituted for a twist tie used as shown in FIG. 1.

As indicated above, cooking utensils in accord with the principles of the present invention need not necessarily have an inner rack or container. One such utensil is shown in FIGS. 8-10 and identified by reference character 310.

Utensil 310 includes a container or pan 312 with side walls 314 and a bottom wall 316; a device 318 for keeping a comestibles-filled bag 320 submersed in a body of cooking liquid 322 in the pan; and a conventional cover or lid 324 with a handle 326.

Holddown device 318 includes a concavo-convex member 328 with an annular flange 330, a cylindrical support member 332 notched at intervals to form feet 334, and an upstanding bracket 336 to which the upper portion 338 of the bag can be affixed.

As shown in FIGS. 8 and 9, stops 340 are fixed to the side wall 314 of pan 312 and extend inwardly from the pan at intervals therearound. These stops keep holddown device 318 and comestibles-filled bag 320 from floating upwardly in cooking medium 322.

Specifically, after the comestibles-filled bag has been loaded into pan 312, holddown device 318 is lowered over it with notches 342 in flange 330 aligned with stops 340 so that the flange can pass to a level below the stops. The holddown device is then rotated until unnotched portions 344 of the flange lie beneath and are therefore engageable by the stops which accordingly keep the

holddown device and the bag 320 beneath its concavo-convex portion 328 from rising.

Referring now to FIGS. 8-10, an aperture 346 is formed in the vertical leg 348 of holddown device bracket 336. This aperture communicates with the upper edge of leg 348 via a slot 350.

A similar aperture 352 is formed through the central part of concavo-convex member 328 of the holddown device and through the horizontal leg 354 of bracket 336. This aperture communicates with the edge of member 328 via a slot 356.

The upper part 338 of bag 320 is drawn through slot 356 into aperture 352 and through slot 350 into aperture 346. This keeps the open end of the bag uppermost in container 312 and out of the cooking medium while the comestibles are cooked.

Also, the opening into the bag is narrowed by disposing it in apertures 346 and 352. If desired, the opening can be further narrowed as by a twist tie or other retainer or by a drawstring, for example.

Provision is also made in cooking utensil 310 for stretching the lower end of the disposable cooking bag 320 across the lower end of holddown support member 332 and then securing the lower corners of the bag to member 332 to keep it taut. As discussed previously, this eliminates the corners, facilitating the removal of comestibles from bag 320. Also, the lower end of the bag and its contents are kept from floating upwardly, promoting rapid and uniform cooking of the comestibles.

As shown in FIG. 11, bag 320 has a rectangular configuration with an open upper end 358 and a closed lower end 360. Holes or apertures 362 are formed through the bag adjacent its lower end and adjacent the two edges of the bag. Inwardly of these apertures, the two sides 364 of the bag (only one of which is shown) are sealed together by seams 366 to prevent leakage.

Bag 320 is secured to the support member 332 of holddown device 318 by stretching its closed end across the lower edge 370 of support member 332 and then hooking the lower corners 372 of the bag over outwardly projecting studs 374 fixed to support member 332, the studs extending through holes 362 in the bag. Two diametrically opposed studs 374 are employed, one for each of the two corners 372 of the bag.

Studs 374 preferably have enlarged heads 376 over which the bag is stretched. The bag then relaxes to its original configuration so that the enlarged heads of the studs keep the corners of the bag in place.

Also, the pan 312 of cooking utensil 310 may be provided with prongs as described above to hold the upper part of the bag open and facilitate access to its contents.

Furthermore, the utensil can be readily given the capability of being used with conventional bags by providing retainers for keeping the lower corners of the bag in place on studs 374. Suitable for this purpose are the spring-type retainers described in parent application Ser. No. 637,966 (now U.S. Pat. No. 4,005,645 issued Feb. 1, 1977).

It will be appreciated by those skilled in the relevant arts that a component such as shown in FIG. 10 may be made heavy enough to keep a comestibles-filled bag submersed by its own weight, making the positive lock-down arrangement unnecessary. In this case the component may be furnished as an accessory and used with a conventional pot or pan in the manner described above. Other of the holddown devices described above may

similarly be furnished as accessories rather than components of a special utensil.

As discussed above, it is contemplated that utensils embodying the principles of the present invention will be used to cook comestibles made available in packaged form, either in sealed bags or bags with an opening closed by a twist tie or other retainer. Such applications of my invention are fully intended to be covered in the appended claims.

Also, I have illustrated in the drawing and described above a variety of cooking utensils and accessories constructed in accord with the principles of the present invention. And I have also pointed out that cooking utensils adhering to the principles of the present invention will not necessarily resemble these to any great extent. The present embodiments are, therefore, to be considered in all respects as illustrative and not restrictive, the scope of the invention being indicated by the appended claims rather than by the foregoing description; and all changes which come within the meaning and range of equivalents of the claims are therefore intended to be embraced therein.

What is claimed and desired to be secured by Letters Patent is:

1. The combination of a cooking utensil for comestibles and a disposable bag for holding the comestibles to be cooked, said utensil comprising a container and means engageable with the comestibles-filled bag to hold said bag in said container and keep it from floating so that said bag can be submerged in a liquid in said container to cook the comestibles in said bag, the means for keeping the comestibles-filled bag from floating including means to which the lower end of the bag can be attached to shape said lower end into a configuration which facilitates the removal of comestibles from said bag and to keep said lower bag end from floating upwardly in the liquid in said container.

2. The combination of claim 1, wherein the means for keeping the bag from floating has a vertically extending wall means and wherein the means to which the lower end of the bag can be attached are studs protruding outwardly from said side wall at diametrically opposed locations therearound.

3. An accessory usable with a container and a disposable bag for holding comestibles to keep the bag submerged in a liquid cooking medium in the container while the comestibles cook, said accessory comprising a cover member adapted to be located above and to be engaged by the comestibles-filled bag, said cover member having an aperture through which the upper end of the bag can be extended to keep said end uppermost during the cooking cycle and thereby prevent upward movement of said bag and its contents and means for supporting the cover member in spaced relation above and from the bottom of the container with which it is used, said cover member supporting means and the cover member being integrated into a single unit and said accessory also having a vertically extending side wall means, the cover member supporting means comprising feet integrated with said side wall means at the lower end thereof and at intervals therearound and the

the cover being integrated with the side wall means at the upper end thereof.

4. An accessory according to claim 3, which has an outwardly directed flange means around the periphery thereof, there being notches at intervals along said flange, whereby said accessory can be locked against upward movement in a container having a bottom wall and co-operating stops by disposing said accessory in said container with said feet resting on the container bottom wall and the notches aligned with the stops and then rotating said accessory to bring unnotched portions of said flange under said stops.

5. An accessory usable with a container and a disposable bag for holding comestibles to keep the bag submerged in a liquid cooking medium in the container while the comestibles cook, said accessory including means adapted to have the lower end of the bag attached thereto to shape said lower end into a configuration which facilitates the removal of comestibles from said bag and to keep said lower bag end from floating upwardly in the liquid in said container, said accessory having a vertically extending wall means and the means to which the lower end of the bag is adapted to be attached comprising studs protruding outwardly from said side wall at diametrically opposed locations therearound, said studs being adapted to have the lower end of the bag attached thereto.

6. The combination of a cooking utensil for comestibles and a disposable bag for holding the comestibles to be cooked, said bag having an opening therein through which comestibles can be introduced and removed and the said utensil comprising a container and means engageable with the comestibles-filled bag to hold said bag in said container and keep it from floating so that said bag can be submerged in a liquid in said container to cook the comestibles in said bag, the means for holding down the comestibles-filled bag and its contents including means for gathering the portion of the bag in which the opening is formed during the cooking cycle so that gases and vapors can escape through the opening without a cooking medium entering the bag therethrough, the means for gathering the portion of the bag in which the opening is formed being a first member incorporated in the holddown means and having an opening therein in which said portion of the bag can be located to gather it and constrict the opening therein, the opening in said first member of the means for holding down the comestibles-filled bag and its contents being a slot therethrough which extends from the periphery to the central part thereof through which the upper part of the bag can be displaced to position the holding means relative to the bag, said first member being generally horizontally oriented, and the means for holding down the comestibles-filled bag including a second member with an opening therethrough, said second member being vertically oriented and located adjacent the inner end of the slot in the first member, whereby the gathered upper end of the bag can be extended through the opening in said second member to retain it in place.

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition
is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

04-1152

TELEFLEX, INCORPORATED and
TECHNOLOGY HOLDING COMPANY,

Plaintiffs-Appellants,

v.

KSR INTERNATIONAL CO.,

Defendant-Appellee.

DECIDED: January 6, 2005

Before MAYER,* SCHALL, and PROST, Circuit Judges.

SCHALL, Circuit Judge.

DECISION

Teleflex Incorporated and Technology Holding Company (collectively, "Teleflex") sued KSR International Co. ("KSR") in the United States District Court for the Eastern District of Michigan for infringement of U.S. Patent No. 6,237,565 B1 ("the '565 patent"). On December 12, 2003, the district court granted summary judgment in favor of KSR,

Judge Haldane Robert Mayer vacated the position of Chief Judge on December 24, 2004.

after determining that claim 4 of the '565 patent, the sole claim at issue, was invalid by reason of obviousness. Teleflex Inc. v. KSR Int'l Co., 298 F. Supp. 2d 581 (E.D. Mich. 2003). Teleflex now appeals the district court's decision. For the reasons set forth below, we vacate the grant of summary judgment and remand the case to the district court for further proceedings.

DISCUSSION

I.

Claim 4 of the '565 patent relates to an adjustable pedal assembly¹ for use with automobiles having engines that are controlled electronically with a device known as an electronic throttle control. As such, the assembly of claim 4 incorporates an electronic pedal position sensor (referred to in claim 4, and throughout this opinion, as an "electronic control"). The electronic control is responsive to the pedal pivot and thereby generates an electrical signal corresponding to the relative position of the gas pedal between the rest and applied positions. Claim 4 specifically provides for an assembly wherein the electronic control is mounted to the support bracket of the assembly. This configuration avoids movement of the electronic control during adjustment of the pedal's position on the assembly. Claim 4 reads:

A vehicle control pedal apparatus (12) comprising:

a support (18) adapted to be mounted to a vehicle structure (20);

an adjustable pedal assembly (22) having a pedal arm (14) moveable in force [sic] and aft directions with respect to said support (18);

¹ An adjustable pedal assembly (e.g., gas, break, or clutch) allows the location of the pedal to be adjusted to accommodate a particular driver's height.

a pivot (24) for pivotally supporting said adjustable pedal assembly (22) with respect to said support (18) and defining a pivot axis (26); and

an electronic control (28) attached to said support (18) for controlling a vehicle system;

said apparatus (12) characterized by said electronic control (28) being responsive to said pivot (24) for providing a signal (32) that corresponds to pedal arm position as said pedal arm (14) pivots about said pivot axis (26) between rest and applied positions wherein the position of said pivot (24) remains constant while said pedal arm (14) moves in fore and aft directions with respect to said pivot (24).

The numbers in claim 4 correspond to the numbers in Figure 2 of the '565 patent.

The specification of the '565 patent indicates that prior-art pedal assemblies incorporating an electronic control suffered from being too bulky, complex, and expensive to manufacture. See '565 patent, col. 1, ll. 48-53. It was this problem that the '565 patent set out to address. See id. col. 2, ll. 2-5.

Teleflex sued KSR in the Eastern District of Michigan, alleging that KSR's adjustable pedal assembly infringed claim 4 of the '565 patent. KSR moved for summary judgment of invalidity of claim 4 based on obviousness under 35 U.S.C. § 103. The district court granted KSR's motion after determining that claim 4 was obvious in view of a combination of prior art references. Teleflex timely appealed the district court's decision. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(1).

II.

This court reviews a district court's grant of summary judgment de novo. TorPharm Inc. v. Ranbaxy Pharms., Inc., 336 F.3d 1322, 1326 (Fed. Cir. 2003). "In a patent case, as in any other, summary judgment may be granted when there are no

disputed issues of material fact, . . . or when the non-movant cannot prevail on the evidence submitted when viewed in a light most favorable to it.” Knoll Pharm. Co. v. Teva Pharms. USA, Inc., 367 F.3d 1381, 1383 (Fed. Cir. 2004). The movant carries the initial burden of proving that there are no genuine issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). If the movant shows a prima facie case for summary judgment, then the burden of production shifts to the nonmovant to present specific evidence indicating there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). “When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.” Caterpillar Inc. v. Deere & Co., 224 F.3d 1374, 1379 (Fed. Cir. 2000). “Where the evidence is conflicting or credibility determinations are required, the judgment should be vacated rather than reversed, and the case should be remanded for further proceedings.” Jones v. Hardy, 727 F.2d 1524, 1531 (Fed. Cir. 1984).

“The grant of summary judgment of invalidity for obviousness must be done on a claim by claim basis.” Knoll Pharm., 367 F.3d at 1383. Because patents are presumed valid, “[t]he accused infringer must prove by clear and convincing evidence that each claim that is challenged cannot reasonably be held to be non-obvious.” Id.; see also Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d 877, 881 (Fed. Cir. 1998). Clear and convincing evidence exists when the movant “place[s] in the mind of the ultimate fact finder an abiding conviction that the truth of its factual contentions are ‘highly probable.’” Colorado v. New Mexico, 467 U.S. 310, 316, 104 S. Ct. 2433, 81 L. Ed. 2d 247 (1994).

A patent claim is obvious, and thus invalid, when the differences between the claimed invention and the prior art "are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. § 103; see also Graham v. John Deere Co., 383 U.S. 1, 14, 86 S. Ct. 684, 15 L. Ed. 2d 545 (1966); In re Dembiczak, 175 F.3d 994, 998 (Fed. Cir. 1999). While obviousness is ultimately a legal determination, it is based on several underlying issues of fact, namely: (1) the scope and content of the prior art; (2) the level of skill of a person of ordinary skill in the art; (3) the differences between the claimed invention and the teachings of the prior art; and (4) the extent of any objective indicia of non-obviousness. See Graham, 383 U.S. at 17-18. When obviousness is based on the teachings of multiple prior art references, the movant must also establish some "suggestion, teaching, or motivation" that would have led a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. See Tec Air, Inc. v. Denso Mfg. Mich. Inc., 192 F.3d 1353, 1359-60 (Fed. Cir. 1999); Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1572 (Fed. Cir. 1996). The nonmovant may rebut a prima facie showing of obviousness with evidence refuting the movant's case or with other objective evidence of nonobviousness. See WMS Gaming, Inc. v. Int'l Game Tech., 184 F.3d 1339, 1359 (Fed. Cir. 1999).

"The reason, suggestion, or motivation to combine [prior art references] may be found explicitly or implicitly: 1) in the prior art references themselves; 2) in the knowledge of those of ordinary skill in the art that certain references, or disclosures in those references, are of special interest or importance in the field; or 3) from the nature of the problem to be solved, 'leading inventors to look to references relating to possible

solutions to that problem.” Ruiz v. A.B. Chance Co., 234 F.3d 654, 665 (Fed. Cir. 2000) (quoting Pro-Mold, 75 F.3d at 1572). “Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.” Dembiczak, 175 F.3d at 999; see also Ruiz, 234 F.3d at 665 (explaining that the temptation to engage in impermissible hindsight is especially strong with seemingly simple mechanical inventions). This is because “[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.” Dembiczak, 175 F.3d at 999. Therefore, we have consistently held that a person of ordinary skill in the art must not only have had some motivation to combine the prior art teachings, but some motivation to combine the prior art teachings in the particular manner claimed. See, e.g., In re Kotzab, 217 F.3d 1365, 1371 (Fed. Cir. 2000) (“Particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.” (emphasis added)); In re Rouffet, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (“In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.” (emphasis added)).

III.

On appeal, Teleflex argues that we should vacate the district court's grant of summary judgment and remand the case because the district court committed multiple errors in its obviousness determination. First, Teleflex urges that the district court erred as a matter of law by combining prior art references based on an incorrect teaching-suggestion-motivation test. Second, it contends that genuine issues of material fact still remain as to whether a person of ordinary skill in the art would have considered it obvious to combine prior art in the manner stated in claim 4. Finally, Teleflex argues that the district court erred by not properly considering the commercial success of Teleflex's patented assembly and by failing to give adequate deference to the patentability determination of the U.S. Patent and Trademark Office ("PTO").

KSR responds that the district court did apply the correct teaching-suggestion-motivation test, and that, under that test, the court correctly concluded that no genuine issues of material fact existed so as to prevent the grant of summary judgment. KSR contends that the district court properly discounted the declarations of Teleflex's experts because their opinions were based on mere legal conclusions. KSR also contends that the district court properly dismissed Teleflex's evidence of commercial success because Teleflex failed to establish a nexus between commercial success and the claimed invention. Finally, KSR argues that the district court gave proper deference to the PTO.

We agree with Teleflex that the district court did not apply the correct teaching-suggestion-motivation test. We also agree that, under that test, genuine issues of material fact exist, so as to render summary judgment of obviousness improper. For

these reasons, we vacate the decision of the district court and remand for further proceedings consistent with this opinion.

IV.

After comparing the teachings of the prior art with claim 4 of the '565 patent, the district court concluded that, at the time of the invention, all of the limitations of claim 4 existed in the prior art. The court explained that U.S. Patent No. 5,010,782, issued to Asano et al. ("the Asano patent"), disclosed all of the structural limitations of claim 4 with the exception of the electronic control. Teleflex, 298 F. Supp. 2d at 592 ("Asano teaches an adjustable pedal assembly pivotally mounted on a support bracket with the pedal moving in a fore and aft directions with respect to the support and the pivot remaining in a constant position during movement of the pedal arm."). Electronic controls were well known in the prior art. Id. Consequently, after finding a person of ordinary skill in the art would have been motivated to combine Asano and electronic control references, the district court granted KSR's motion for summary judgment of invalidity by reason of obviousness.

The district court based its finding of a suggestion or motivation to combine largely on the nature of the problem to be solved by claim 4 of the '565 patent. Id. at 593-94. The court determined from the patent's specification that the invention of the '565 patent was intended to "solve the problem of designing a less expensive, less complex and more compact [assembly] design." Id. at 593. The court then explained that U.S. Patent No. 5,819,593, issued to Rixon et al. ("the Rixon '593 patent"),² also

² As explained by the district court, the Rixon '593 patent teaches the combination of an electronic control with an adjustable pedal assembly. The Rixon '593 patent and claim 4 differ, however, in that the electronic control of Rixon is attached to

“suffered from being too complex because the pedal position sensor is located in the pedal housing and its fore and aft movement with the adjustment of the pedal could cause problems with wire failure. Thus, the solution to the problem required an electronic control that does not move with the pedal arm while the pedal arm is being adjusted by the driver.” Id. at 594. The court then concluded that “a person with ordinary skill in the art with full knowledge of Asano and the modular pedal position sensors would be motivated to combine the two references to avoid the problems with Rixon '593.” Id.

The district court also found an express teaching to attach the electronic control to the support bracket of a pedal assembly based on the disclosure of U.S. Patent No. 5,063,811, issued to Smith et al. (“the Smith patent”). The court explained that Smith teaches the use of a “rotary potentiometer . . . attached to a fixed support member and responsive to the pedal's pivot shaft.” Id. Moreover, the court stated that Smith provided express teachings as to the desirability of attaching the electronic control to a fixed support member in order to avoid the wire failure problems disclosed in the Rixon '593 patent and solved by the '565 patent: “[T]he wiring to the electrical components must be secure from the possibility of chafing which will eventually result in electrical failure. Thus, the pedal assemblies must not precipitate any motion in the connecting wires themselves” Id. (quoting the Smith patent, col. 1, ll. 33-38).

(Cont'd. . . .)

the pedal housing instead of the support bracket. See Teleflex, 298 F. Supp. 2d at 594. The electronic control of the Rixon reference consequently moves during adjustment of the pedal assembly. Id. The electronic control of claim 4 does not move during adjustment of the pedal assembly.

Finally, the district court explained that the prosecution history of the '565 patent bolstered its finding of a suggestion or motivation to combine the Asano and electronic control references. The court explained that the patent examiner initially rejected the '565 patent in view of the teachings of U.S. Patent No. 5,460,061, issued to Redding et al. ("the Redding patent"), and the Smith patent. The examiner stated that the Redding patent disclosed the assembly structure of claim 4 and that Smith disclosed the electronic control attached to the assembly support structure. The patentee overcame the rejection, the court explained, by adding the limitation requiring the position of the assembly's pedal pivot to remain constant during adjustment of the assembly. (The position of the pedal pivot of the Redding patent does not remain constant during adjustment of the assembly position.) However, the Asano patent discloses an assembly where the position of the pivot remains constant during adjustment of the pedal assembly. Therefore, the district court reasoned, had Asano been cited to the patent examiner, the examiner would have rejected claim 4 as obvious in view of the Asano and Smith patents. Id. at 595.

We agree with Teleflex that the district court's analysis applied an incomplete teaching-suggestion-motivation test in granting KSR summary judgment. This is because the district court invalidated claim 4 of the '565 patent on obviousness grounds without making "finding[s] as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the] invention to make the combination in the manner claimed." Kotzab, 217 F.3d at 1371. Under our case law, whether based on the nature of the problem to be solved, the express teachings of the prior art, or the knowledge of one of ordinary skill in the art, the

district court was required to make specific findings as to whether there was a suggestion or motivation to combine the teachings of Asano with an electronic control in the particular manner claimed by claim 4 of the '565 patent. See Kotzab, 217 F.3d at 1371; Rouffet, 149 F.3d at 1357. That is, the district court was required to make specific findings as to a suggestion or motivation to attach an electronic control to the support bracket of the Asano assembly.

The district court correctly noted that the nature of the problem to be solved may, under appropriate circumstances, provide a suggestion or motivation to combine prior art references. However, the test requires that the nature of the problem to be solved be such that it would have led a person of ordinary skill in the art to combine the prior art teachings in the particular manner claimed. See Rouffet, 149 F.3d at 1357. We have recognized this situation when two prior art references address the precise problem that the patentee was trying to solve. See Ruiz, 357 F.3d at 1276 ("This record shows that the district court did not use hindsight in its obviousness analysis, but properly found a motivation to combine because the two references address precisely the same problem of underpinning existing structural foundations."). In this case, the Asano patent does not address the same problem as the '565 patent. The objective of the '565 patent was to design a smaller, less complex, and less expensive electronic pedal assembly. The Asano patent, on the other hand, was directed at solving the "constant ratio problem."³ The district court's reliance on the problems associated with the Rixon '593 patent similarly fails to provide a sufficient motivation to combine. This is

³ The constant ratio problem refers to the problem of creating an assembly where the force required to depress the pedal remains constant irrespective of the position of the pedal on the assembly. See Asano patent, col. 1, l. 48–col. 2, l. 13.

because the Rixon '593 patent does not address the problem to be solved by the '595 patent; rather, it suffers from the problem. The court did not explain how suffering from the problem addressed by the '595 patent would have specifically motivated one skilled in the art to attach an electronic control to the support bracket of the Asano assembly.

Neither do we agree with the district court's reliance on the express teachings of the Smith patent. This is because the statement in the Smith patent that "the pedal assemblies must not precipitate any motion in the connecting wires," does not necessarily go to the issue of motivation to attach the electronic control on the support bracket of the pedal assembly. In other words, solving the problem of wire chafing is a different task than reducing the complexity and size of pedal assemblies. What is more, the Smith patent does not relate to adjustable pedal assemblies; therefore, it does not address the problem of wire chafing in an adjustable pedal assembly.

Our view of the case is not altered by the '565 patent's prosecution history. That is because a court's task is not to speculate as to what an examiner might have done if confronted with a piece of prior art. Rather, a court must make an independent obviousness determination, taking into account the statutory presumption of patent validity. See TorPharm, 336 F.3d at 1329-30 ("[W]here the factual bases of an examiner's decision to allow a claim have been undermined—as in other cases where prior art not before the examiner is brought to light during litigation—a court's responsibility is not to speculate what a particular examiner would or would not have done in light of the new information, but rather to assess independently the validity of

the claim against the prior art under section 102 or section 103. Such determination must take into account the statutory presumption of patent validity.”).⁴

We also agree with Teleflex that the presence of genuine issues of material fact rendered summary judgment inappropriate. KSR, in the first instance, failed to make out a prima facie case of obviousness. The only declaration offered by KSR—a declaration by its Vice President of Design Engineering, Larry Willemssen—did not go to the ultimate issue of motivation to combine prior art, i.e. whether one of ordinary skill in the art would have been motivated to attach an electronic control to the support bracket of the assembly disclosed by Asano. Mr. Willemssen did state that an electronic control “could have been” mounted on the support bracket of a pedal assembly. (Willemssen Decl. at ¶ 33, 36, 39.) Such testimony is not sufficient to support a finding of obviousness, however. See, e.g., In re Deuel, 51 F.3d 1552, 1559 (Fed. Cir. 1995) (“‘Obvious to try’ has long been held not to constitute obviousness.”). Mr. Willemssen also provided the following as a “specific motivation to combine” an electronic control with an adjustable pedal assembly:

[A]n increasing number of vehicles sold in the United States came equipped with electronic throttle control systems because such systems offered various operational advantages over cable-actuated throttle control systems In order to function in a vehicle whose engine incorporated an electronic throttle control, the adjustable pedal assembly . . . would have had to be coupled to an electronic pedal position sensor.

⁴ Noting Teleflex’s argument that the district court did not give adequate deference to the PTO, we do not discern anything in the record indicating the district court failed to properly defer to the PTO. Nevertheless, we reiterate that, on remand, the district court must independently assess the evidence and determine whether KSR has provided clear and convincing evidence indicating invalidity of claim 4 by reason of obviousness.

(Willemsen Decl. at ¶¶ 34, 37, 39.) This statement may be factually correct. However, the issue is not whether a person of skill in the art had a motivation to combine the electronic control with an adjustable pedal assembly, but whether a person skilled in the art had a motivation to attach the electronic control to the support bracket of the pedal assembly.

In addition, Teleflex offered two declarants—Clark J. Radcliffe, Professor of Mechanical Engineering at Michigan State University; and Timothy L. Andresen, a former engineer at Ford Motor Company and McDonnell-Douglas Corporation—in rebuttal of the declaration of Mr. Willemsen. Mr. Radcliffe stated, *inter alia*, that “[t]he location of the electronic control” (Radcliffe Decl. at ¶ 15) in claim 4 “was a simple, elegant, and novel combination of features,” (Radcliffe Decl. at ¶ 16) as opposed to the Rixon ’593 patent’s attachment of the electronic control to the assembly housing, which was both electrically and mechanically complex (Radcliffe Decl. at ¶ 17). Mr. Andresen also stated that the non-obviousness of claim 4 was reflected in Rixon’s choice to mount the electronic control to the assembly housing instead of the assembly’s support bracket. (Andresen Decl. at ¶ 5.) At the summary judgment stage of a proceeding, it is improper for a district court to make credibility determinations. *See, e.g., Jones*, 727 F.2d at 1531. Therefore, by crediting KSR’s expert declarant and discrediting the two declarants offered by Teleflex, the district court erred as a matter of law.

V.

In sum,

(1) We hold that, in granting summary judgment in favor of KSR, the district court erred as a matter of law by applying an ~~incomplete teaching-suggestion-motivation~~

test to its obviousness determination. The correct standard requires a court to make specific findings showing a teaching, suggestion, or motivation to combine prior art teachings in the particular manner claimed by the patent at issue.

(2) Under this standard, we hold that genuine issues of material fact exist as to whether a person of ordinary skill in the art would have been motivated, at the time the invention was made, to attach an electronic control to the support structure of the pedal assembly disclosed by the Asano patent.

(3) We consequently vacate the decision of the district court and remand the case for further proceedings on the issue of obviousness, and, if necessary, proceedings on the issues of infringement and damages.

Each party shall bear its own costs.